TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 208.

J. Frank Clinch,

RECEIVER OF THE FIDELITY NATIONAL BANK OF CINCINNATI, OHIO, APPELLANT,

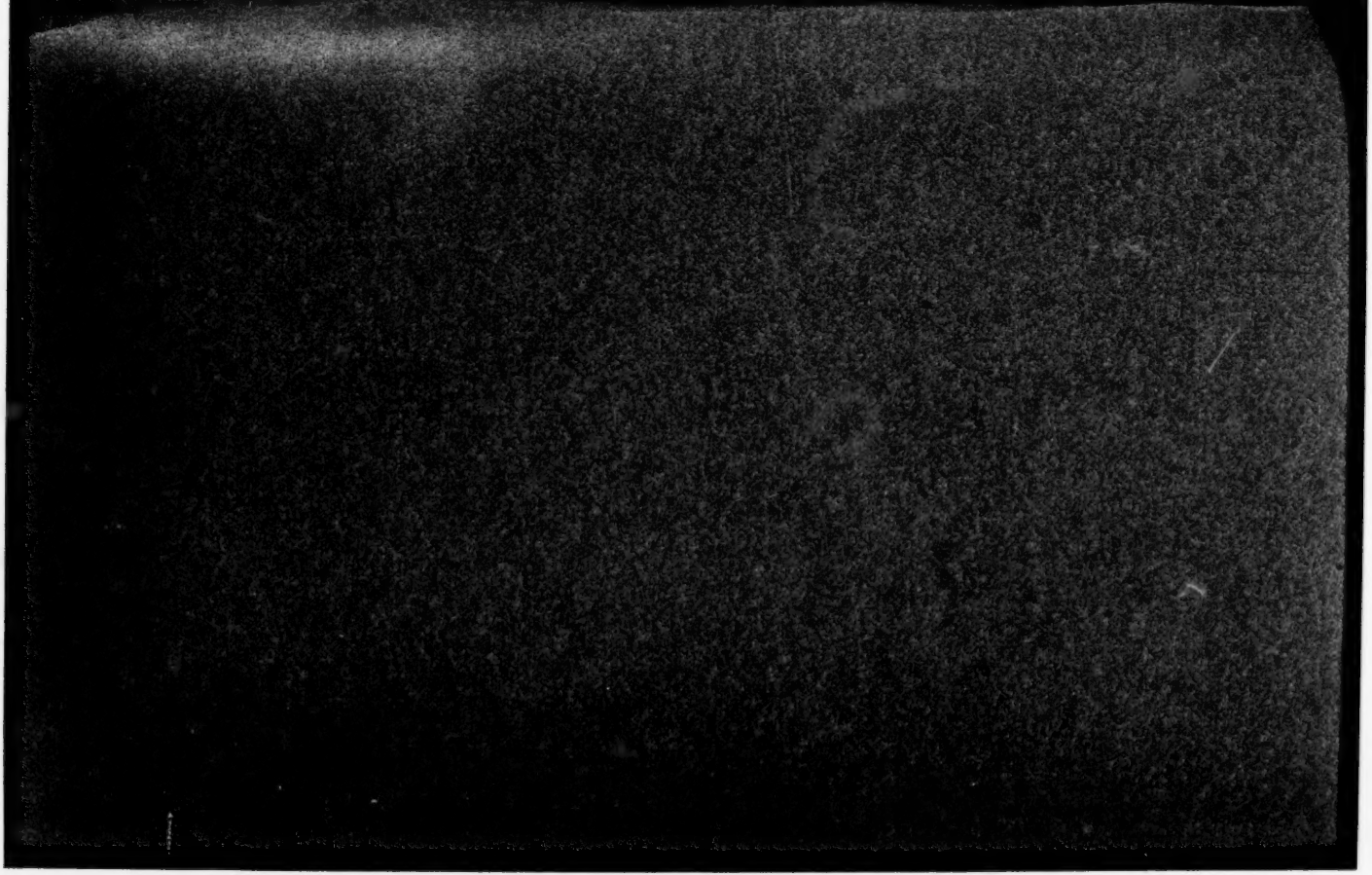
vs.

THE CHEMICAL NATIONAL BANK OF NEW YORK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED APRIL 23, 1895.

(16,849.)



(16,849.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 279.

DAVID ARMSTRONG, RECEIVER OF THE FIDELITY NATIONAL BANK OF CINCINNATI, OHIO, APPELLANT,

vs.

THE CHEMICAL NATIONAL BANK OF NEW YORK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

INDEX.

	Original.	Print.
Caption	1	1
Stipulation as to printing record	1	1
Transcript from the circuit court of the United States for the southern district of Ohio	2	1
Caption	2	2
Bill of complaint	3	2
Exhibit A—Schedule of notes	7	6
Subpœna issued	8	7
Answer	8	7
Exceptions to answer	12	10
Order sustaining exceptions, &c.	14	12
Amended answer	17	13
Replication	20	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 17, 1898.

	Original.	Print.
Plaintiff's Exhibit No. 1—Letter, Harper to Quinlan, February 28, 1887	21	17
No. 2—Certificate of deposit, Feb. 28, 1887	22	19
No. 3—Account Fidelity bank with Chemical bank	23	19
No. 4—Letter, Harper to Chemical bank, May 21, 1887	23	19
No. 5—Letter, Armstrong to Quinlan, November 14, 1887	24	20
No. 6—(Not set out here)	26	21
No. 7—Decree of the circuit court of the United States for the southern district of New York in case of Armstrong, receiver, *vs.* Chemical National Bank	26	22
No. 8—Telegram, Fidelity bank to Chemical bank, May 19	27	22
No. 9—Letter, Harper to Quinlan	27	23
Defendant's Exhibit No. 10—Account Chemical bank with E. L. Harper & Co.	28	24
No. 11—Statement of account	29	25
Evidence for complainant	30	26
Testimony of Wm. J. Quinlan, Jr	30	26
George G. Williams	51	44
Notary's certificate	55	48
Testimony of Joseph W. Wilshire	57	49
Notary's certificate	70	61
Evidence for defendant	71	62
Testimony of J. Harry Watters	72	62
David Armstrong	85	75
Armstrong Exhibit No. 1—Letter, Quinlan to Armstrong, November 17, 1887	100	88
No. 2—Letter, Quinlan to Armstrong, November 18, 1887	101	89
No. 3—Letter, Armstrong to Worthington, April 25, 1890	101	89
Complainant's proof of claim	102	90
Exhibit A—Certificate of deposit	103	91
B—List of notes	103	91
No. 3ª—Letter, Quinlan to Armstrong, March 28, 1891	105	92
No. 4—Letter, Quinlan to Armstrong, March 7, 1891	105	92
No. 5—(Not set out here)	105	92
No. 6—(Not set out here)	105	93
No. 7—Receipt, Armstrong, receiver, to Chemical bank, December 27, 1887	106	93
Schedule of notes, &c.	107	94
No. 8—Letter, Quinlan to Armstrong, November 25, 1887	109	95

	Original.	Print.
Armstrong Exhibit No. 9—Letter, Armstrong to Quinlan, November 29, 1887	111	98
Watters Exhibit No. 2—Deposit slip of E. L. Harper, March 2, 1887	112	98
No. 3—Account	112	98
No. 4—Letter, Harper to Quinlan, February 28, 1887	113	99
No. 5—Letter, Harper to Chemical bank, May 21, 1887	114	100
No. 6—Letter, Quinlan to Armstrong, July 23, 1887	115	100
No. 7—Letter, Quinlan to Armstrong, August 24, 1887	115	101
No. 8—(Not set out)	115	101
No. 9—(Not set out)	115	101
No. 10—(Not set out)	116	101
Notary's certificate	116	101
Stipulation as to payments on notes of Whitely, Fassler & Kelly	117	102
Memoranda with reference to form of decree	117	102
Assignment of errors	118	103
Appeal bond	119	104
Mandate (missing)	120	105
Appointment of examiner, &c	120	105
Evidence for complainant	121	106
Testimony of Wm. J. Quinlan	121	106
George G. Williams	129	113
Dumont Clarke	134	117
Alonzo Barton Hepburn	136	119
Thaddeus Firth	139	121
Edward Townsend	148	130
Geo. F. Baker	150	131
Frederick D. Tappan	151	132
Notary's certificate	153	134
Commission to take testimony	154	134
Testimony of Wm. Beatty McCauslen	156	136
M. M. White	165	144
Franklin Alter	172	150
Chas. Arthur Hinsch	176	153
Solomon P. Kineon	178	155
Wm. A. Goodman	184	160
W. S. Rowe	186	162
H. C. Yergason	192	167
Griffith P. Griffith	195	170
J. D. Hearn	200	174
Albert P. Gahr	202	176
Exhibits offered	204	178
Evidence for defendant	206	179
Testimony of J. H. Watters (recalled)	206	179
Exhibit 1—Statement of J. H. Watters	213	186
Evidence for complainant	223	194
Testimony of Wm. Beatty McCauslen (recalled)	223	194
Evidence for defendant	224	195

	Original.	Print.
Testimony of J. Harry Watters (recalled)	224	195
Jas. H. Matthews	237	205
Henry Pogue	243	211
Solomon P. Kineon	246	214
"Exhibit Minutes" to W. B. McCausleu's testimony	247	215
Directors' meeting, February 25, 1886	247	214
May 6, 1886	247	215
By-laws	249	217
Directors' meeting, August 2, 1886	252	219
August 10, 1886	253	220
September 14, 1886	253	220
October 12, 1886	253	220
November 9, 1886	254	220
December 14, 1886	254	220
December 24, 1886	254	220
January 11, 1887	255	222
February 8, 1887	257	223
March 8, 1887	258	224
March 26, 1887	258	224
May 10, 1887	259	224
Reconcilement sheets—Monthly statements, &c.	259	225
Letter, Armstrong to Chemical bank, July 12, 1887	268	233
Letter, Quinlan to Armstrong, July 6, 1887	268	233
Letter, Quinlan to Baldwin, May 11, 1887	269	234
Letter, Quinlan to Baldwin, May 18, 1887	269	234
Stipulation as to files in cause No. 4054	269	234
Bill of complaint in case of Armstrong, receiver, *vs.* Swift *et al.*, No. 4054	271	235
Application of Armstrong, receiver in cause No. 4054, for leave to compromise claim against Swift *et al.*	289	251
Order for hearing on foregoing application in cause No. 4054	292	253
Order in cause No. 4054 granting leave to compromise claim against Swift *et al.*	294	254
Judgment in cause No. 4054	296	256
Orders as to satisfaction of judgment in cause No. 4054	297	257
Protest of Catherine Brooks in cause No. 4054	299	258
Protest of Oscar I. Frank in cause No. 4054	300	259
Protest of Richard Mallay in cause No. 4054	301	260
Account of E. L. Harper	302	261
Account of J. H. Matthews	304	263
Account of A. P. Gahr	305	264
Examiner's certificate	306	264
Opinion of Judge Sage	307	266
Final decree	318	275
Petition for appeal	320	276
Assignment of errors	320	277
Appeal bond	322	278
Alias mandate	323	279
Clerk's certificate	325	280
Citation and service	325	281
Appearance for appellant	327	282
Hearing	327	282

	Original.	Print.
Submission	328	282
Final decree	328	283
Opinion	330	283
Petition for appeal	356	307
Assignment of errors	358	308
Order allowing appeal	360	309
Bond on appeal	361	309
Citation	363	310
Acceptance of service of citation	364	311
Clerk's certificate	365	311

1 *Transcript of Record.*

United States Circuit Court of Appeals for the Sixth Circuit.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank, Appellant,
vs.
THE CHEMICAL NATIONAL BANK, Appellee.
No. 473.

Stipulation as to Printing Record.

The clerk will please print the record in this cause, including this stipulation, but omitting:

1st. The subpœna and the return thereof, as found on pages 9 and 10 of the record.

2nd. Exhibit 3, Quinlan's deposition, found on pages 30 to 33, inclusive.

3rd. Exhibit 6, Quinlan's deposition, as found on pages 38 and 39.

4th. Armstrong's Exhibit No. 6, as found on pages 150, 151 and 152.

5th. Watters' Exhibit 8, as found on pages 164 to 168, inclusive.

6th. Watters' Exhibit 10, as found on pages 171 to 192.

7th. Watters' Exhibit 9, as found on pages 169 and 170.

8th. Notices to take depositions and acknowledgment of the same, as found on pages 27, 81, 102, 223 and 224.

9th. Judge Sage's first opinion, as found on pages 194 to 210.

10th. The first decree below, as found on pages 212 to 214, inclusive.

11th. Assignment of error, as found on pages 214 to 216.

12th The appeal bond given after the first decree, found on pages 217 and 219.

And in place of each of the above items Nos. 2, 3, 4, 5, 6 and 7, he will, in printing, insert in the record where said exhibits would be found, if they were printed in the record in full, the memoranda relating to such exhibits given him herewith.

2 And it is agreed that with the permission of the court either party may, on argument, refer to or quote from any of the accounts not printed in full, should such course seem advisable for furnishing more exact information.

JOHN W. HERRON,
Counsel for Appellant.
WM. WORTHINGTON,
Counsel for Appellee.

No. 473. Stipulation for printing record. Filed Feb. 12, 1897. Frank O. Loveland, clerk.

THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } *ss:*

At a stated term of the circuit court of the United States of America, within and for the western division of the southern dis-

trict of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of October, being also the 6th day of that month, in the year of our Lord one thousand eight hundred and ninety-six, and of the American Independence the one hundred and twentieth—present, the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

THE CHEMICAL NATIONAL BANK, Complainant,
vs.
DAVID ARMSTRONG, as Receiver of the Fidelity National Bank, Defendant. } In Equity.

Be it remembered that heretofore, to wit, on the 10th day of May, A. D. 1890, came the complainant, The Chemical National Bank, and filed in the clerk's office of said court its certain bill of complaint against the defendant herein; said bill of complaint is clothed in the words and figures following, to wit:

3 *Bill of Complaint.*

Circuit Court of the United States in and for the Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK
vs.
DAVID ARMSTRONG, as Receiver of the Fidelity National Bank.

To the judges of the circuit court of the United States for the southern district of Ohio, western division:

The Chemical National Bank of the City and State of New York brings this its bill of complaint against David Armstrong, a citizen of the State of Ohio, as receiver of the Fidelity national bank, formerly of the city of Cincinnati and State of Ohio, and thereupon your orator complains and says:

For a long time prior to the first day of January, A. D. 1887, your orator, The Chemical National Bank, aforesaid, was, and since said last-named day, has been, and now is, a corporation duly incorporated as a national banking corporation or banking association, situate in the city of New York, State of New York, under and by virtue of the banking acts of the United States authorizing the formation of national banking associations, and that from the date of its incorporation, and at the dates and times herein mentioned, the said Chemical national bank, being thereunto authorized by said acts, transacted and at the present time continue to transact a banking business in the city of New York.

That a long time prior to the first day of January last named, the Fidelity national bank was duly incorporated and became a body corporate as a national banking corporation or banking association, situate in the city of Cincinnati and State of Ohio, under and by

virtue of said banking act, and that from the date of its incorporation up to the 18th day of June, A. D. 1887, the said Fidelity national bank, being thereunto authorized by said acts, transacted and continued to transact a banking business in the said city of Cincinnati.

That on, to wit, the second day of March, 1887, the said Chemical national bank at the special instance and request of the said Fidelity national bank loaned to said Fidelity national bank the sum of three hundred thousand dollars ($300,000.00), which said sum said Fidelity national bank promised and agreed to repay to said
4 Chemical national bank on demand, with interest thereon from the date of said loan. And at the same time said Fidelity national bank deliver- to said Chemical national bank as an inducement to it to make said loan, and as security therefor, its certificate of deposit No. 345, which certificate of deposit, together with the endorsements then made thereon, was in the words and figures, as follows, to wit:

Certificate of Deposit.

This certificate is not subject to check, but must be presented to draw the money. No. 345.

The Fidelity National Bank.

CINCINNATI, *Feb.* 28, 1887.

E. L. Harper has deposited in this bank three hundred thousand dollars ($300,000.00), payable to the order of himself on return of this certificate in current funds.

AMMI BALDWIN, *Cashier.*

$300,000.00.
Endorsed: "E. L. Harper."

At the time said certificate was issued, and when the same was delivered to your orator, said Ammi Baldwin was the cashier of said Fidelity national bank, and his signature, as made to said certificate of deposit, was used as the signature of said Fidelity national bank by the authority of said last-named bank.

And at the same time, to wit, on the said second day of March, said Fidelity national bank delivered to said Chemical national bank, as collateral security for said loan, sundry promissory notes of the aggregate face value of $326,695.30.

Afterwards, on or about the twenty-first day of May, A. D. 1887, at the special instance and request of said Fidelity national bank, said Chemical national bank returned to said Fidelity national bank certain of the promissory notes delivered to said Chemical national bank as collateral security, as aforesaid, and received therefor certain other promissory notes in substitution for the notes so returned, so that upon the making of said exchange and substitution the Chemical national bank was the owner and holder of the promissory notes set forth and described in the schedule hereto attached, marked "Exhibit A," which schedule is hereby made part

of this bill of complaint as collateral security for the payment of said loan made upon the second day of March, A. D.,
5 1887, and said Chemical national bank has since continued to be, and is now the owner and holder of said notes set forth in said "Exhibit A," except in so far as the same have been paid to said Chemical national bank by the persons indebted thereon, as follows, that is to say, three of the notes of J. W. Wilshire, for the sum of $25,000 each, one becoming due upon the 28th day of July, 1887, one becoming due upon the 29th day of August, 1887, and one becoming due upon the 1st day of October, 1887, were paid at maturity thereof by John V. Lewis, who was the endorser thereon; and said Chemical national bank, since the payments so as aforesaid has held the money so received as collateral security for said loan of March 2, 1887, in lieu of the notes so paid.

That on the twenty-first day of June A. D. 1887, the Comptroller of the Currency, having become satisfied as specified in said banking acts of the United States that the said Fidelity national bank was insolvent, did on that day appoint the defendant, David Armstrong, receiver of the said bank, as provided in section 2234, of the Revised Statutes of the United States, and said defendant, duly qualified as such receiver under such appointment and entered upon the performance of, and has ever since performed, and is now performing, the duties of receiver, aforesaid.

That on the twelfth day of July, 1887, upon information theretofore duly filed in the circuit court of the United States for the southern district of Ohio, western division, such proceedings were had upon due notice to the Fidelity national bank, that a decree and order was duly entered in said court whereby, among other things, it was adjudged and decreed that all the rights, privileges and franchises of said association the Fidelity national bank were forfeited, and said association declared, adjudged and decreed to be dissolved.

Your orator further is informed and believes, and therefore avers the fact to be, that no one of the promissory notes set forth and described in said "Exhibit A," was at the time the same were respectively delivered to said Chemical national bank, as collateral security, as aforesaid, or at any time afterwards, part of the assets and property of said Fidelity national bank.

Your orator further states that said Fidelity national bank never repaid to your orator the sum of money loaned by your orator to said Fidelity national bank on the second day of March, A. D. 1887, as aforesaid nor any part thereof.

Your orator further states that it has presented to said defendant, as receiver as aforesaid proof of the indebtedness of said Fidel-
6 ity national bank, to your orator upon the loan made by your orator to said Fidelity national bank, as aforesaid, and has requested said defendant, as such receiver, to submit such proof to the Comptroller of the Currency, to the end that your orator may be admitted to be a creditor of the Fidelity national bank in the sum of $300,000.00 with interest thereon from the second of March, A. D. 1887, said sum, with interest, being the amount due upon said loan at the

time of the appointment of said receiver; and to the end that a dividend may be made and paid to your orator upon said claim from the assets of said Fidelity national bank in the hands of said defendant, as such receiver, equal in ratio to the dividends heretofore paid by said comptroller and said defendant, as such receiver, to other creditors of said Fidelity national bank, and that your orator might thereafter receive such further dividends upon said sum as might be made by said comptroller upon the claims of the creditors of said bank until the claim of your orator from said dividends and from the proceeds of the promissory notes set forth in said "Exhibit A" should be paid in full. But said defendant and said Comptroller of the Currency have refused and still do refuse to admit and allow the claim of your orator, as aforesaid, and refuse to enroll your orator, as one of the creditors of said Fidelity national bank, and to pay to it the dividends heretofore ordered paid to the creditors of said Fidelity national bank, and still do so refuse; and this, although said comptroller now has in his possession large sums of money, the proceeds of the assets of said Fidelity national bank, collected by said receiver, and said receiver has in his possession assets of said Fidelity national bank of great value.

And your orator states that heretofore said Comptroller of the Currency has made ratable dividends from the moneys collected from the assets of said Fidelity national bank on the claims proved or adjudicated against said bank, and by said defendant as receiver has paid such dividends to said creditors. The exact amounts of said dividends and when they were declared and paid your orator is unable to state. But upon information and belief it avers that the same are of a large amount, to wit, at least the sum of thirty-five (35) per cent. upon the claims so allowed or adjudicated. And said comptroller will hereafter declare other dividends and will through said defendants, as such receiver, pay the same to other creditors of said Fidelity national bank to the exclusion of your orator, unless prevented by this court.

All of which action by said Comptroller of the Currency and by said defendant, as such receiver, being contrary to equity
7 and good conscience and tending to the manifest wrong and injury of your orator and for as much as your orator has no adequate remedy in the premises at or by the strict rules of the common law, and is only relievable in a court of equity where matters of this nature are properly cognizable and relievable, to the end therefore that said defendant, as such receiver, may, if he can, show cause why your orator should not have the relief hereby prayed for, and may full, true, and perfect answer make (oath being waived) to all and singular the matters and charges aforesaid, and that the amount due to your orator upon its loan to said Fidelity national bank made on the second day of March, A. D. 1887, may be ascertained and a decree be entered adjudging that your orator is a creditor of said Fidelity national bank in the sum so found due, and is entitled to receive the dividends ratable with the other creditors of said bank which have heretofore been made and paid to such other creditors, with interest thereon from the time the same

were ordered paid, and also such further ratable dividends as may hereafter be ordered to be paid to the creditors of said Fidelity national bank until from such dividends and from the proceeds of the notes set forth in said "Exhibit A," the claim due to your orator is fully paid, and that your orator may have such further order and relief in the premises as may be equitable and just. May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of your honorable court to be directed to said David Armstrong, as receiver of the Fidelity national bank, by a certain day and under a certain penalty therein to be inserted, to be and appear before this court, and then and there to answer all and singular the premises, and further to stand and abide such order and decree herein as shall be agreeable to equity and good conscience. And your orator will ever pray.

WM. WORTHINGTON,
Solicitor and Counsel for Complainant.

EXHIBIT A.

Note of	J. W. Wilshire,	due June 28, 1887..	$25,000 00
"	" "	July 28, " ..	25,000 00
"	" "	Aug. 28, " ..	25,000 00
"	" "	Oct. 1, " ..	25,000 00
"	" Champion Machine Co.	July 24, " ..	4,500 00
"	" "	July 28, " ..	5,200 00
8			
"	" "	Aug. 3, " ..	5,000 00
"	" "	Aug. 20, " ..	4,500 00
"	" Swift's iron & steel works	Sept. 16, " ..	25,000 00
"	" "	Sept. 21, " ..	25,000 00
"	" Riverside iron & steel w'ks	Sept. 28, " ..	15,386 35
"	" "	Oct. 8, " ..	15,386 35
"	" Whitley, Fassler & Kelly	Oct. 4, " ..	4,633 07
"	" "	Oct. 5, " ..	5,370 04
"	" "	Oct. 13, " ..	5,640 00
"	" "	Oct. 23, " ..	5,608 09
"	" "	Nov. 4, " ..	5,343 00
"	" "	Nov. 5, " ..	4,000 00
"	" "	Nov. 13, " ..	5,872 00
"	" "	Nov. 19, " ..	5,209 20
"	" "	Dec. 4, " ..	3,892 10
"	" "	Dec. 5, " ..	4,890 10
"	" "	Dec. 13, " ..	5,710 52
"	" "	Dec. 19, " ..	5,178 40
"	" "	Dec. 23, " ..	4,413 17
"	" "	Jan. 5, 1888..	4,450 00
"	" "	Jan. 13, " ..	4,200 00
"	" H. S. Bundy, payable on demand		50,000 00

This note of Bundy was secured by $100,000 Latrobe Coal & Iron Co. bonds.

And afterwards, to wit, on the 10th day of May, there was issued out of the clerk's office of the court aforesaid our certain subpœna in chancery, directed to the marshal of the district and against the defendant herein, said subpœna is clothed in the words and figures following, to wit:

And afterwards, to wit, on the seventh day of August, A. D. 1890, the following answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Answer.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK }
vs.
DAVID ARMSTRONG, Receiver, etc. }

The answer of David Armstrong, receiver, to the bill of complaint filed in this case by the complainant.

9 And now comes the said David Armstrong, as receiver of the Fidelity National Bank of Cincinnati, Ohio, and for answer to the several matter set forth in the bill of complaint filed in this cause, or to so much thereof as he is advised that it is material or necessary for him to answer, says:

He admits that the complainant is a corporation organized and doing business as set forth in the said bill of complaint.

He admits that the Fidelity National Bank of Cincinnati was organized and did business as set forth in said bill, and that on the twenty-first day of June, 1887, the Comptroller of the Currency found that the said Fidelity national bank was insolvent, and on the twenty-seventh day of June, 1887, appointed this defendant receiver of the same; and defendant accepted the said appointment, and has duly qualified as such receiver, and has continued to act as such since that date, and is still so acting.

He admits that on the twelfth day of July, 1887, by decree of the circuit court of the United States for the southern district of Ohio all the rights, privileges and franchises of said association were forfeited, and the same was dissolved.

And the said defendant, further answering, says that it is true that on the second day of March, 1887, Ammi Baldwin was the cashier of the said Fidelity national bank and authorized to perform all the duties usually performed by such an officer. He also states that at the same time Edward L. Harper was the vice-president of the said bank and was the general manager of its affairs.

Defendant is unable to state from personal knowledge or from the records of said bank whether or not the said plaintiff on the date aforesaid loaned to the said Fidelity national bank the sum of three hundred thousand ($300,000) dollars on the faith and credit of the alleged certificate of deposit described in said bill; but he does aver

from information and belief that at said date said Edward L. Harper was engaged in large speculations on his own account, and in such speculations was using the funds of said bank and did so use said funds to a very large amount; and so as in the end, to cause the failure of said bank; that in such use of the funds of said bank he was assisted by said Baldwin as cashier, but that such use was not known to the other directors of said bank, and was not, in fact, authorized by its officers, and was fraudulent.

This defendant further avers from information and belief that said certificate of deposit described in said bill of complaint was fraudulently and without any consideration whatever, signed by said Baldwin; that said Harper had not deposited said $300,000.00, or any other sum in said bank as the basis of said certificate; nor had he said sum at that date on deposit in said bank; that said alleged certificate of deposit was not entered on the books of said bank; nor was the issuing of it known to, or authorized by the directors of said bank; that the proceeds obtained on the same were not received by the said bank, but were fraudulently appropriated by the said Harper to his own use.

This defendant, therefore, avers that the said certificate of deposit should be paid by said Harper, and that if by reason of any facts existing at the time same was taken by plaintiff, or that the plaintiff believed the same to be properly issued by the said bank, the said Fidelity national bank became liable to plaintiff thereon, it is only liable thereon as surety for said Harper, and is entitled to all the rights and privileges of a surety in any proceedings instituted for its collection.

This defendant further answering, says, and avers from information and belief, that said Harper at the time when said certificate was forwarded to plaintiff, also forwarded to it the said promissory notes as set forth in said petition; that certain substitutions were subsequently made by him in said security and that at the time of the failure of the said Fidelity national bank, the plaintiff held the promissory notes, a list of which is as given in the schedule attached to the bill of complaint. That three of said notes made by J. W. Wilshire, and endorsed by J. V. Lewis, for the sum of twenty-five thousand dollars each, were paid at maturity by said J. V. Lewis attested in said bill of complaint. The fourth note of said J. V. Lewis, also endorsed by said J. V. Lewis, for a like amount, payable June 28, 1887, was not presented at its maturity by the plaintiff; and by reason of plaintiff's failure to present the same for payment, the same was not paid by said J. V. Lewis, who was the endorser thereon. That said J. V. Lewis was entirely solvent, but claims to have been released from his liability thereon by reason of the said note not being presented for payment at its maturity, and notice not being given to him of its non-payment.

And this defendant avers that plaintiff did not receive payment of said note, solely by reason of its negligence in not presenting said note for payment at its maturity, and giving the proper notice to said endorser.

11 This defendant further avers that the said plaintiff in addition to the sums received as hereinbefore stated, has also received on the collateral forwarded to it by said Harper, the following: That upon the notes of the Champion Machine Co., described in the said schedule attached to the bill, the sum of $4,481.49 in cash, and the bonds of the Champion Machine Company to the amount of $5,800, and the bonds of Whitely, Fassler & Kelly, secured by mortgage, to the amount of $9,600.

Defendant avers that the plaintiff on the payments of each of said promissory notes of $25,000 each, as hereinbefore set forth, credited the same on the said alleged loan of $300,000, and reported them to this defendant as payments on that account, and treated said payments in all respects as proper credits on the amounts so claimed to be due from said Fidelity national bank.

Defendant, therefore, avers that he is entitled to require that all of the said payments, and also the amount of the $25,000 note due June 28, 1887, should be credited on the sum claimed to be due from the said Fidelity national bank; and that said plaintiff is not in any event entitled to prove as a valid claim against the trust represented by this defendant a larger sum than the amount of said alleged loan, after deducting all of said payments and the amount of said $25,000 note.

And that whenever subsequent sums are collected by said plaintiff from said collateral, this defendant will be entitled to recover back from it the same percentage on the amount so collected as the plaintiff has received in dividends at said date.

And defendant further avers that said collateral notes of the Champion Machine Company, belonged to the Fidelity national bank, and the others were in equity the property of the said Fidelity national bank at the time when the same were forwarded by said Harper to the plaintiff; that said notes were claimed by said Harper to be discounted by him for the makers or endorsers of the same, but such claim was fraudulent on the part of said Harper; that the money paid to the said makers or endorsers on the said promissory notes by said Harper, was the money of the Fidelity national bank, used by him without authority; and that, therefore, the said bank was in equity the owner of said promissory notes.

Defendant further says that said plaintiff presented to him as receiver the claim now sued upon, on the twenty-fifth day of April, 1890, but such claim was never presented to him or any demand made of him for the allowance of the same until said date; that this defendant then refused to allow said claim for the full amount, but did, in writing, offer to admit, and to pay dividends on

12 the sum of two hundred thousand ($200,000) dollars, that being about the amount which this defendant believed to be due after making the credits to which he claims he was justly entitled to as set forth in this answer; and to pay said dividend and allow said sum without prejudice to the right of plaintiff to sue for the balance of said claim, which offer was refused by the said plaintiff.

Defendant, therefore, asks that an account may be taken of the

amount received by plaintiff on its said claim, and that the amount to which the plaintiff is legally entitled to prove against the trust represented by this defendant be ascertained by this court, and this defendant is ready and willing to pay the dividends declared upon whatever sum may finally be ascertained to be due on said plaintiff's claim.

JOHN W. HERRON,
Solicitor for Defendant.

Exceptions to Answer.

And afterwards, to wit, on the sixteenth day of September, A. D., 1890, the following exceptions were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK *vs.* DAVID ARMSTRONG, as Receiver of the Fidelity National Bank.	No. 4339. Exceptions to Answers.

Exceptions taken by the above-named plaintiff to the answer of the defendant for insufficiency and impertinency.

First exception. For that the said defendant has not in and by his answer, according to the best of his knowledge, remembrance, information and belief, answered the several allegations contained in the following portion of said bill, viz., the passage beginning, "that on, to wit, the second day of March, A. D., 1887, the said Chemical national bank at the special instance and request of the said Fidelity national bank loaned to said Fidelity national bank," down to and inclusive of the words, "was used as the signature of said Fidelity national bank by the authority of said last-named bank."

13 Second exception. That the following allegation contained in said answer is insufficient and evasive, viz., "that it is true that on the second day of March, 1887, Ammi Baldwin was the cashier of the said Fidelity national bank, and authorized to perform all the duties usually performed by such an officer."

Third exception. That the following portion of said answer is insufficient and evasive, viz., the passage beginning with the words "defendant is unable to state from personal knowledge or from the records of said bank," down to and inclusive of the words "alleged certificate of deposit described in said bill."

Fourth exception. The following portion of said answer is impertinent, viz., that part thereof immediately following the passage mentioned in the next preceding exception, and beginning with the words, "but he does aver from information and belief that at said date, said Edward L. Harper," down to and inclusive of the words, "authorized by its officers and was fraudulent."

Fifth exception. That the following portion of said answer is impertinent, viz., that part thereof immediately following the passage mentioned in the last preceding exception, beginning with the words, "this defendant further avers from information and belief, that said certificate of deposit," down to and inclusive of the words, "appropriated by the said Harper to his own use."

Sixth exception. That the following portion of said answer is impertinent, viz., that part thereof immediately following the passage mentioned in the last preceding exception, beginning with the words "this defendant therefore avers that the said certificate of deposit should be paid by said Harper," down to and inclusive of the words "privileges of a surety in any proceedings instituted for its collection."

Seventh exception. That the following portion of said answer is insufficient and evasive, viz., the passage following that mentioned in the past preceding exception, and beginning with the words "this defendant, further answering, says and avers, from information and belief, that said Harper, at the time," down to and inclusive of the words "schedule attached to the bill of complaint," in that the same neither specifically admits nor denies the allegations contained in the bill respecting the same matters, and also in that it does not aver whether the action by said Harper there stated did or did not purport to be action by him as an officer of said Fidelity national bank."

Eighth exception. That the following portion of said an-
14 swer is impertinent, viz., that passage beginning "that a fourth note of said J. V. Lewis, also endorsed by said J. V. Lewis," down to and inclusive of the words "and giving proper notice to said endorser."

Ninth exception. That the following portion of said answer is insufficient and evasive, viz., the passage beginning with the words "this defendant further avers that said plaintiff, in addition to the sums received as hereinbefore stated," down to and inclusive of the words "secured by mortgage to the amount of $9,600.00," for that, first it refers to collateral forwarded by said Harper without averring whether in so doing said Harper purported to be acting as an individual or as an officer of said Fidelity national bank; and, secondly, it does not aver *then* the other sums and secureties therein stated to have been received by the plaintiff were received, or whether before or after the filing of the bill of complaint in this cause.

Tenth exception. The following portion of said answer is impertinent, viz., that beginning with the words "and the other were in equity the property of the said Fidelity national bank," down to and inclusive of the words "and that therefore the said bank was in equity the owner of said promissory notes."

Eleventh exception. And should the last exception not be sustained by the court the passage so excepted to for impertinency is also insufficient and evasive, in that it does not allege what sums of money, if any, were paid to the respective makers and endorsers of said promissory notes from the funds of the Fidelity national bank.

Twelfth exception. The following portion of said answer is impertinent, viz., the passage beginning "defendant further says that said plaintiff presented to him," down to and inclusive of the words "which offer was refused by the said plaintiff."

And said complainant humbly insists that the impertinent matter aforesaid ought to be expunged from said answer, and that the matter aforesaid alleged to be evasive and insufficient in so far as the same may not be expunged, ought to be amended, and humbly prays that said answer may be amended accordingly.

WM. WORTHINGTON,
Solicitor and Counsel for Complainant.

Entry Sustaining Exceptions; Leave to Amend.

And afterwards, to wit, on the twenty-seventh day of January, A. D. 1891, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Z, p. 274.

The exceptions taken by the plaintiff to the answer of the defendant coming on to be heard, and having been argued by counsel and considered by the court, it is now ordered—

That the first of said exceptions be sustained, and that the defendant make full, perfect and complete answer to the portion of the bill specified in said exception, viz., the passage beginning "that on, to wit, the second day of March, 1887, said Chemical national bank," down to and inclusive of the words "was used as the signature of said Fidelity national bank by the authority of said last-named bank."

That the second exception be sustained, and that the defendant make answer and state whether or not the signature of said Ammi Baldwin to said certificate of deposit was used as the signature of said Fidelity national bank by the authority of said last-named bank.

That the third exception is sustained and the defendant is required to answer, and either admit or deny that the plaintiff loaned to the said Fidelity national bank said sum of $300,000 on the faith and credit of the certificate of deposit described in said bill.

That the fourth, fifth and sixth exceptions are sustained and that part of said answer beginning with the words "but he does aver from information and belief that at said date said Edward L. Harper was engaged," down to and inclusive of the words "is entitled to all the rights and privileges of a surety in any proceeding instituted for its collection," is expunged from said answer.

That the seventh exception is sustained and the defendant is required to answer further that portion of the bill beginning with the words "and at the same time, to wit, on said second day of March said Fidelity national bank delivered to said chemical national bank as collateral security," down to and inclusive of the words "marked Exhibit A" which schedule is hereby made part of this bill of com-

plaint, as collateral security for the payment of said loan, made upon the second day of March A. D. 1887."

That the eighth exception is sustained and the passage in said answer beginning with the words "that a fourth note of said J. V. Lewis," down to and inclusive of the words "and giving the proper notice to said endorser," is expunged from said answer, but leave is given to defendant to answer further, show, if so he can, that
16 all right to recover upon said note has been lost by the negligence of the plaintiff.

That the ninth exception is sustained and the defendant is required to amend the portion of the answer beginning with the words "this defendant further avers that the said plaintiff, in addition to the sums received as before stated," down to and inclusive of the words "secured by mortgage to the amount of $9,600," by stating whether or not the collateral therein referred to was, or was not, forwarded to plaintiff by the Fidelity national bank, or an officer thereof, acting as such officer, and further stating the time when the plaintiff received the other sums and securities therein referred to.

The tenth exception is sustained and that portion of said answer beginning with the words "and the others were in equity the property of the said Fidelity national bank at the time when the same were forwarded," down to and inclusive of the words "and that therefore said bank was in equity the owner of said promissory notes" is expunged from said answer.

That the twelfth exception is sustained and the portion of said answer beginning with the words "defendant further says that said plaintiff presented to him, as receiver," down to and inclusive of the words "and that therefore said bank was in equity the owner of said promissory notes" is expunged from said answer.

That the twelfth exception is sustained and the portion of said answer beginning with the words "defendant further says that said plaintiff presented to him, as receiver" down to and inclusive of the words "which offer was refused by the said plaintiff," is expunged from said answer.

And leave is given to the defendant to file an amended answer correcting his former answer in the matters above set forth within five days from the entry hereof.

Amended Answer.

And afterwards, to wit, in the fourth day of February, A. D. 1891, the following amended answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

17 United States Circuit Court, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK OF NEW YORK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank. } Amended Answer.

The amended answer of David Armstrong, receiver, to the bill of complaint filed in this cause by complainant.

Now comes the said David Armstrong, as receiver of the Fidelity National Bank, of Cincinnati, Ohio, and for amended answer to the several matters set forth in the bill of complaint filed in this cause, or to so much thereof as he is advised that it is material or necessary for him to answer, says:

He admits that the complainant is a corporation organized and doing business as set forth in said bill of complaint.

He admits that the Fidelity National Bank of Cincinnati was organized and did business as set forth in said bill, and that on the twenty-first day of June, 1887, the Comptroller of the Currency found that the said Fidelity national bank was insolvent, and on the twenty-seventh day of June, 1887, appointed this defendant the receiver of the same, and that this defendant accepted the said appointment, and was duly qualified as such receiver, and has acted as such since that date, and is still so acting.

He admits that on the twelfth day of July, 1887, by decree of the circuit court *for* the United States for the southern district of Ohio all the rights, privileges and franchises of said association were forfeited and the same was dissolved.

And this defendant further answering says that according to the best of his knowledge, remembrance, information and belief, he denies that on the second day of March, 1887, The Chemical National Bank, complainant, loaned to the Fidelity national bank the sum of three hundred thousand ($300,000) dollars; he denies that any such loan was made by said Chemical national bank to said Fidelity national bank on the faith and credit of the alleged certificate of deposit set forth in said bill of complaint, and he denies that said alleged certificate of deposit was executed by Ammi Baldwin as the act of the said Fidelity national bank, and by the authority of said bank.

18 Respondent admits that Ammi Baldwin was on the second day of March, 1887, the cashier of the said Fidelity national bank, but he denies that he was authorized by the said bank to execute or deliver the alleged certificate of deposit set forth in said bill.

This respondent further answering upon information and belief, says: that on the second day of March, 1887, and prior thereto, Edward L. Harper was the vice-president of the Fidelity national bank, and was engaged in large speculations on his own account, and in such speculations was using the funds of said bank; that in such use of the funds of said bank, he was assisted by said Ammi

Baldwin; but the said use of the said funds was not known to the other directors of said bank, and was not authorized by said bank, and was a fraudulent and illegal appropriation of the funds of said bank to the personal use of said Edward L. Harper.

Respondent further says that on the second day of March, 1887, a paper was signed by said Ammi Baldwin, represented as cashier of said Fidelity national bank, which respondent believes to be the same paper described in complainant's bill, and alleged to be a certificate of deposit of said Fidelity national bank; that said alleged certificate was not entered upon the books of the bank—was not taken from the certificate book from the place from which, if regular, it should have been taken; that its execution was unknown to the other officers of the bank, and was unauthorized by the said bank. That no consideration whatever was received by the said Fidelity national bank from said Harper, or from any other person, for the said certificate, nor was there any money deposited in the said bank as the basis of said certificate, but the same was wholly fictitious and fraudulent.

Respondent further says from information and belief that said certificate of deposit was forwarded to the Chemical national bank by said Harper and in connection therewith the promissory note described in complainant's bill, and the sum of $300,000 was received by said Harper from said Chemical national bank; said Harper represented to the officers of the said bank that said money was received from a loan made to him; and by his direction the same was placed to his credit on his personal account, and the said sum was thereupon drawn out by him and used for his individual use, and the other officers of said bank had no knowledge that the facts were otherwise than as represented by him; that the large portion of said promissory notes were the personal property of said Harper, in which the Fidelity national bank had no interest; that said Edward L. Harper had not on deposit in said Fidelity national bank the sum of $300,000 as the basis for said certificate of deposit, which fact was known to the complainant; that the complainant also knew that the promissory notes forwarded to it as collateral security for said loan, and belonging to said Harper were his property, and not of the Fidelity national bank; that no part of the money paid by the said complainant was received by the Fidelity national bank, but was appropriated by said Harper to his individual use.

19

This respondent further answering upon information and belief says that three of the notes forwarded by said Edward L. Harper to the said complainant on the second of March, 1887, and which notes were the property of said Harper, made by J. W. Wilshire, to the order of and endorsed by J. V. Lewis, for the sum of $25,000 each, were paid by said J. V. Lewis, at maturity, to the complainant; that the fourth note of said Wilshire endorsed by said Lewis for a like amount, due June 28, 1887, was not presented for payment by said complainant at maturity, and in consequence of said neglect to present the same, the same was not paid, and said J. V. Lewis was thereby discharged; that said J. V. Lewis was entirely solvent, bu

refuses to pay the same in consequence of the neglect to notify him as endorser, in due time, of the non-payment of said note.

And this respondent avers that the negligence of the complainant in the premises was the sole cause of said note not being paid.

And respondent further avers that since the bringing of the present action the complainant has been paid from the notes so sent to it by said Harper, and which belonged to him, the following: that upon the notes of the Champion Machine Company described in the bill there has been paid to the complainant the sum of $4,481.49 in cash, and the bonds of the Champion Machine Company to the amount of $5,800, and the bonds of Whitely, Fassler & Kelly, secured by mortgage to the amount of $9,600.

Respondent also avers that the complainant, upon the payment of the three sums of $25,000 as hereinbefore set forth, credited the same on the said alleged loan of $300,000, and reported the same to this respondent as payments on that account, and treated said payments in all respects as proper credits on said alleged loan.

This respondent, therefore, claims that the Fidelity national bank was not liable to the complainant for the amount of said loan, and that complainant is not entitled to prove the same as a valid claim against the trust estate held by him. And, further, that if by reason of the fraud of said Harper and said Baldwin, and their unauthorized acts, as hereinbefore set forth, this court shall find that said Fidelity national bank was liable for the amount of said alleged loan, then he asks that all payments made to the complainant from the collateral paper belonging to said Harper, and forwarded by him to the complainant as security for said loan, shall be credited thereon; that the amount of the note of said Wilshire, not being paid as aforesaid in consequence of the negligence of the complainant to present the same for payment shall be charged to complainant and credited on said loan; and that the balance of said collateral paper shall be first exhausted, and the proceeds of the same credited also on said loan; and that the complainant shall be permitted to prove only the amount remaining due on said loan after said credits have been made, and that complainant shall have all other and further relief in the premises as in equity he may be entitled to.

JOHN W. HERRON,
Solicitor for Defendant.

And afterwards, to wit, on the eleventh day of February, A. D. 1891, the following replication was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Replication.

THE CHEMICAL NATIONAL BANK OF NEW YORK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank.
No. 4339.
Replication.

Replication of the Chemical National Bank of New York, plaintiff, to the amended answer of David Armstrong, receiver of the Fidelity national bank, defendant.

This repliant, saving and reserving to itself all, and all manner of advantage of exception to the manifold insufficiencies of the said amended answer, for replication thereunto saith, that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said amended answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that, any other matter or thing whatsoever in the said amended answer, contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall
21 direct; and humbly prays, as in and by its said bill it hath already prayed.

WILLIAM WORTHINGTON,
Solicitor for Plaintiff.

And afterwards, to wit, on the twenty-first day of March, A. D. 1891, the following deposition(s) was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

PLAINTIFF'S EXHIBIT No. 1.

Briggs Swift, president; E. L. Harper, vice-president; Ammi Baldwin, cashier; Benj. E. Hopkins, ass't cashier.

United States depository.

The Fidelity national bank.

Capital, $1,000,000.00.

EXHIBIT A, Nov. 28, 1890. J. G. C., N. P., Y. Co.

CINCINNATI, *February* 28, 1887.

Plaintiff's Exhibit No. 1, March 11th, 1891. J. A. S., ex'r.

Wm. J. Quinlan, Jr., cashier Chemical national bank, New York city.

DEAR SIR: Enclosed herewith we hand you for credit, our certificate of deposit, No. 345, for $300,000.00, with bills as collateral, as follows:

Jung Brewing Co., due June 24, 1887 ..... $25,000 00
Ret. May 23, '87.
Jung Brewing Co., due April 24, 1887 ..... 10,000 00
Swift's iron and steel w'ks, due May 18, 1887 ..... 25.000 00
Ret. May 23, '87.
Swift's iron and steel w'ks, due May 28, 1887 ..... 25,000 00
Ret. May 23, '87.
J. W. Wilshire, endorsed by—
J. V. Lewis, due May 28, 1887 ..... 25,000 00
Ret. May 23, '87.
J. V. Lewis, due June 28, 1887..... 25,000 00
J. V. Lewis, due July 28, 1887..... 25,000 00
J. V. Lewis, due Aug. 28, 1887..... 25,000 00
Riverside iron & steel w'ks, due May 22, 1887..... 15,000 00
Ret. May 23, '87.
22 Riverside iron & steel w'ks, due May 31, 1887.... 15,000 00
Ret. May 23, '87.
C. Aultman & Co., due May 16, 1887 ..... 10,000 00
Ret. May 23, '87.
C. Aultman & Co., due May 20, 1887 ..... 10,000 00
C. Aultman & Co., due May 23, 1887 .... 10,000 00
Ret. May 23, '87.
C. Aultman & Co., due May 27, 1887 ..... 10,000 00
Ret. May 23, '87.
C. Aultman & Co., due May 31, 1887 ..... 10,000 00
Ret. May 23, '87.
Champion Ice Machine Co., due June 1, 1887..... 5,500 00
Ret. May 23, '87.
Champion Ice Machine Co., due June 1, 1887..... 5,378 01
Ret. May 23, '87.
Champion Ice Machine Co., due June 10, 1887..... 4,350 10
Ret. May 23, '87.
Champion Ice Machine Co., due June 10, 1887..... 4,610 00
Ret. May 23, '87.
Champion Ice Machine Co., due June 11, 1887..... 5,487 00
Ret. May 23, '87.
Champion Ice Machine Co., due June 15, 1887..... 5,700 00
Ret. May 23, '87.
Champion Ice Machine Co., due June 22, 1887..... 5,620 19
Ret. May 23, '87.
Champion Ice Machine Co., due June 24, 1887..... 5,850 00
Ret. May 23, '87.
Champion Ice Machine Co., due June 24, 1887..... 4,500 00
Champion Ice Machine Co., due July 28, 1887 ..... 5,200 00
Champion Ice Machine Co., due Aug. 3, 1887..... .... 5,000 00
Champion Ice Machine Co., due Aug. 20, 1887..... 4,500 00

We desire to keep a large reserve with you and we trust you will make the rate as low as you proposed some time since.

Please place the amount to our credit and advise the rate.

Respectfully yours, E. L. HARPER,
Vice-President.

Certificate of Deposit.

This certificate is not subject to check, but must be presented to draw money.

The Fidelity national bank.

No. 345.

PLAINTIFF'S EXHIBIT 2, March 11, 1891. J. A. S., ex'r.

CINCINNATI, *Feb.* 28, 1887.

E. L. Harper has deposited in this bank three hundred
23 thousand dollars ($300,000.00) payable to the order of himself on return of this certificate in current funds.

AMMI BALDWIN, *Cashier.*

$300,000.00.

Endorsed: "E. L. Harper."

Plaintiff's Exhibit No. 2, attached to the deposition of Wm. J. Quinland, Jr.

Under instructions from counsel *from* appellant and appellee, Exhibit No. 3, is not printed in full, but only the following abstract or description thereof:

Said exhibit is in the form of an account headed:

"Dr. Fidelity national bank in account with Chemical national bank. Cr.

The first entries thereof are dated March 1st, 1887. That entry upon the credit side, being a balance brought down. The last entries are dated April 1, 1887. On the right or credit side of the account, under date of March 7, 1887, is the following entry:

"Loan, $300,000.00."

PLAINTIFF'S EXHIBIT No. 4.

Exhibit "C," book 28, '90. J. G. C., N. P., N. Y. C.

Plaintiff's Ex. 4, March 11, 1891. J. A. S., ex'r.

The Fidelity national bank.

CINCINNATI, *May* 21, 1887.

Chemical national bank, New York city.

GENTLEMEN: Enclosed herewith we hand you to hold as collateral the following bills:

H. S. Bundy, demand	$50,000 00
Swift's iron and steel w'ks, May 13th, 4 mos	25,000 00
Swift's iron and steel w'ks, May 18th, 4 mos	25,000 00
J. W. Wilshire, April 28th, 5 mos	25,000 00
Riverside Iron and Steel Co., due Sept. 25th	15,386 35
Riderside Iron and Steel Co., due Oct. 5th	15,386 35

Whitely, Fassler & Kelly, April 1st, 6 mos.....	4,633	07
Whitely, Fassler & Kelly, April 1st, 7 mos.....	5,343	07
24 Whitely, Fassler & Kelly, April 1st, 8 mos. ...	3,892	10
Whitely, Fassler & Kelly, April 20th, 6 mos....	5,608	09
Whitely, Fassler & Kelly, April 20th, 8 mos.....	4,413	17
Whitely. Fassler & Kelly, May 2nd, 5 mos..	5,370	04
Fassler, May 2nd, 6 mos.....	4,000	00
Fassler, May 2nd, 7 mos.....	4,890	10
Fassler, May 2nd, 8 mos.....	4,850	00
Fassler, May 10th, 5 mos.....	5,640	00
Fassler, May 10th, 6 mos.....	5,872	00
Fassler, May 10th, 7 mos.....	5,710	52
Fassler, May 10th, 8 mos.....	4,210	00
Fassler, May 16th, 6 mos.....	5,209	20
Fassler, May 16th, 7 mos.....	5,178	40
	$230,592	46

Will you kindly return to me the following:
C. Aultman & Co., due in May, five pieces.
Swift's iron and steel works, due in May, two pieces.
Champion Machine Co., due in June, 8 pieces.
Jung Brewing Co., due in June, 1 piece.
J. W. Wilshire, due in May, 1 piece.
Riverside Iron and Steel Co., due in May, 2 pieces.
We will pay the loan July 15th, 1887, if agreeable to you, and will pay interest now to that date.

Respectfully yours,

E. L. HARPER,
Vice-President.

PLAINTIFF'S EXHIBIT No. 5.

David Armstrong, receiver of the Fidelity national bank.

Capital, $1,000,000.

Plaintiff's Exhibit 5, March 11, 1891. J. A. S., ex'r.

Department ——.

In reply, please refer to date and department.

CINCINNATI, OHIO, *Nov.* 14, 1887.

Wm. J. Quinland, Jr., cashier, Chemical national bank, New York.

DEAR SIR: Your letters of the 31st ult. and 3rd inst. received, with statement of interest account, and list of collateral notes, unmatured and protested items. My absence from the city will
25 explain to you the cause of delay in acknowledging receipt of same, I notice in the unpaid list note of J. W. Wilshire, endorsed by J. V. Lewis, due June 28, 1887, $25,000. This note, I am informed, was not protested by you, and by reason thereof, the endorser, J. V. Lewis, released. Mr. Wilshire being entirely insolvent, I will have to ask, and do hereby ask and request that you

credit the account of the Fidelity national bank with the amount of the note. Referring to the matter mentioned in your letter of the 3rd inst., would say that we have made an arrangement with the Montreal bank, Chicago, whereby we hope at an early day to remove the embargo placed on the collateral in your hands, and procure the return of same into our hands. Concerning our matters generally, I will add, that I will, in the settlement of the affairs of the Fidelity national bank and the Chemical national, claim that the loan of $300,000 bond (loan) on the certificate of deposit dated February 28, 1887, and secured by certain collateral notes, is and should be treated as an entirely separate and distinct transaction from the indebtedness to the Chemical on account of overdrafts, and the proceeds of the collateral notes deposited by the Fidelity to secure said overdrafts cannot be applied by you to the payment of the $300,000 loan or any part thereof, but that the proceeds of the said collateral notes collected by you, and now in your hands, can only be applied to the payment of the balance due you from the Fidelity by means of overdrafts, excluding therefrom said loan of $300,000 and the interest thereon.

That in making up the account between us, you will be entitled to credit on the said $300,000 such collections as you have made on the collateral notes placed with you by the Fidelity national bank to secure said loan, and for the balance due on that account, if any, you must prove your claim against said bank and share with the general creditors; that of the $1,000,000 and odd collateral notes placed by said bank with you to secure overdrafts you will be entitled to apply of the proceeds of collections on same now in your hands an amount sufficient to pay said overdrafts, or balance due you on account, excluding said $300,000 loan and the interest thereon.

As a preliminary step looking to the settlement of our affairs in accordance with my views as above, I hereby make a formal demand on you to credit the account of the Fidelity National Bank of Cincinnati, Ohio, with the amount of the J. W. Wilshire note endorsed by J. V. Lewis, due June 28, 1887, $25,000 together with the interest thereon, and that you remit to me as receiver of said bank
26 the balance due from you from the proceeds of the collateral notes deposited with you to secure said overdrafts and collected by you, after deducting therefrom the amount due you on account of overdrafts, exclusive of the balance due you on said $300,000 loan and interest.

Very respectfully, D. ARMSTRONG, *Receiver.*

Under instructions from counsel for appellant and appellee, Exhibit No. 6 is not printed in this place in the record. It is printed hereafter on page 142, as Armstrong's Exhibit Nos. 1 and 2.

PLAINTIFF'S EXHIBIT No. 7.

Circuit Court of the United States for the Southern District of New York.

DAVID ARMSTRONG, as Receiver of the Fidelity National Bank,
vs.
THE CHEMICAL NATIONAL BANK.
} In Equity. April Term, 1890.

Plaintiff's Exhibit 7, March 11, 1891. J. A. S., ex'r.

This cause came on to be further heard at this term, and was argued by counsel and thereupon, upon consideration thereof it was ordered, adjudged, and decreed as follows:

There is due to David Armstrong, receiver of the Fidelity national bank from the defendant, The Chemical National Bank, the sum of $271,808.34 with interest thereon from the seventh day of May, 1890, being the date of the master's report in this cause.

And it is further ordered, adjudged and decreed that the said, The Chemical National Bank, do pay to the complainant or to his solicitor for him the said sum of $271,808.34 with interest thereon from the date of the said master's report.

And it is further ordered, adjudged and decreed that the Chemical national bank do pay to the complainant or his solicitor the costs of his suit in this behalf to be taxed, and that in default of payment thereof or of the said other moneys above adjudged to him as aforesaid the complainant have execution according to law.

WM. J. WALLACE.
JOHN A. SHIELDS, *Clerk.*

(A copy.)
(L. S.)

27 PLAINTIFF'S EXHIBIT No. 8, TELEGRAM.

Plaintiff's Exhibit 8, March 11, 1891.

Exhibit B, 1732, October 1, 1889. J. A. S., special examiner.

Number	Sent by	Rec'd by	Check
B 189 C	R.	In.	be pd. me.

Dated CINCINNATI, O., 19.

Rec'd at 4.58 p. (m.).

MAY 19.

To Chemical national bank, New York:

"We send other bills to take place. Will want all returned here without presenting, as we advised parties to arrange payment here.

"FIDELITY NATIONAL BANK."

PLAINTIFF'S EXHIBIT No. 9.

Briggs Swift, president; E. L. Harper, vice-pres.; Ammi Baldwin, cashier; Benj. E. Hopkins, ass't cash.

United States depository.

The Fidelity national bank.

Capital, $2,000,000.00. Surplus, $400,000.00.

PLAINTIFF'S EXHIBIT 9, March 11, 1891. J. A. S., Ex'r.

Exhibit C, October 1, 1889. J. A. S., special examiner.

William J. Quinlan, Jr., cashier, New York.

DEAR SIR: Please do not present any of the collateral paper for payment. We have advised parties we would order back and charge up here. We will tomorrow send you new notes to take the place of ones maturing. We will pay the loan July 15th, and will pay interest till that date, if agreeable to you.

Yours truly, E. L. HARPER, *V. P.*

28 DEFENDANT'S EXHIBIT No. 10.

DEFENDANT'S EXHIBIT 10, March 12, 1891. J. A. S., Ex'r.

DR. Chemical national bank in account with E. L. Harper & Co. CR.

1886.			1886.		
May 17	Balance from Ledger 2.	2,195 85	May 21		600
24		30,000	24		30,000
29		50,000	29		50,000
June 1		50,000	June 1		50,000
7		59,450 48	7		50,000
July 9	24,340.92	23,841 91	8		3,986 21
	499.01	25,000	9		6,000
12		100,000	July 12		25,000
29	T. L.	50,000	14		23,500
Aug. 9					
Oct. 27	27,560.53	27,155 51	30		50,000
	405.02				50,000
1887.		50,000	31		50,000
					1,000
Jan. 3		61,970 57	Aug. 9		25,000
15	63,169.72	5,688 57	Oct. 29		458 33
15	1,199.15				
15		535,302 89	Nov. 1		50,000
			Dec. 31		50,000
			1887.		10,000
			Jan. 3		4,500
			19		4,000
			20		
			24		534,044 54
			29	Bal.	1,258 35
		535,302 89			535,302 89
Feb. 7		1,258 35	Mch. 2	87-2-28-87 to Fidelity nat'l b'k	
					1,000
April 4		50,000	Apr. 4	For Fidelity national bank.	50,000
13	T. L., E. L. Harper.	50,000	13	4-11 For Fidelity national bank.	50,000
		101,258 35			101,000
			89		
			Feb. 16	2-12-89 J. H. Stewart, trustee.	8 35
					101,008 35
				Bal.	250
Mch.'89		101,258 35			101,258 35
			89		
Mch. 5	Balance	250	Apr. 12	Duplicate.	250
1889.		250			250

DEFENDANT'S EXHIBIT No 11.

Receiver of the Fidelity national bank.

1890. May 22	S. A. Walker, solicitor, payment made under order of Judge Wallace.	272,796 07		2890. May 22	Amount of interest paid receiver of Fidelity nat'l bank under decision of Judge Wallace.		47,796 07
				June 17	Cash Champion Machine Co		4,481 49
				"	Bonds " " "		5,800
				"	Whitely, Fassler & K. bonds		9,600
				Dec. 31	From profit and loss		50,000
					Balance		155,118 51
		272,796 07					272,796 07

Defendant's Ex. 11.
March 12, 1891.
J. A. S., ex'r.

4—276

4141

30 *Deposition of Wm. J. Quinlan.*

United States Circuit Court, Southern District of Ohio, Western Division.

CHEMICAL NATIONAL BANK, Plaintiff,
vs.
DAVID ARMSTRONG, as Receiver of the Fidelity National Bank, Defendant.

Testimony on behalf of plaintiff, taken under the annexed notice before John A. Shields, Esq., United States commissioner, at the Chemical national bank, No. 270 Broadway, New York, on Wednesday, March 11, 1891, at 11 a. m.

Appearances: Charles Jones, Esq., for plaintiff; John W. Herron, Esq., for defendant.

WILLIAM J. QUINLAN, Jr., of lawful age, being by me first duly cautioned and sworn as a witness on behalf of the plaintiff, deposes and says as follows:

By Mr. JONES:

Q. 1. What is your name, age, residence, and occupation?

A. Name, William J. Quinlan, Jr.; age, 46; residence, 186 South Oxford street, Brooklyn; occupation, cashier of the Chemical national bank, New York.

Q. 2. How long have you been such cashier?

A. Thirteen years.

Q. 3. Did the Chemical bank have dealings with the Fidelity National Bank of Cincinnati, Ohio?

A. Yes, sir.

Q. 4. State the general character of the transactions between them before March, 1887?

A. The Fidelity national bank remitted to us checks and drafts and various papers representing money for their credit, and we in like manner remitted to them items for our credit.

Q. 5. Was there a collection account independent of any other account between those banks?

A. There was, sir.

Q. 6. Of what did the general account consist irrespective of the collection account?

A. Items received from the Fidelity national bank for their credit, against which they were entitled to draw.

Q. 7. And against which they did draw?

A. And against which they did draw.

Q. 8. That account did not differ from the ordinary account between a bank and its depositor.

A. No; it was the ordinary account.

31 Q. 9. Have you a letter received from the Fidelity national bank under date of February 28, 1887?

A. Yes, sir.
Q. 10. Produce it?

The witness produces the letter.

Q. 11. Are you acquainted with the signature of E. L. Harper, vice-president, signed to that?
A. Yes, sir.
Q. 12. Is it the genuine signature?
A. It is.

The letter referred to is offered in evidence on behalf of the plaintiff, and marked Plaintiff's Exhibit 1, March 11, 1891, J. A. S., ex'r.

Q. 13. The memoranda on the right-hand margin of the letter were made after its receipt, were they?
A. Yes. sir.
Q. 14. And formed no part of the letter when it was received?
A. No, sir.
Q. 15. About when did you receive that letter, Mr. Quinlan?
A. March 7th.
Q. 16. State what it enclosed?
A. It enclosed a certificate of deposit of the Fidelity national bank for $300,000, and a number of collateral notes aggregating $326,000 and odd dollars.
Q. 17. The collateral notes mentioned in it?
A. Yes, sir.
Q. 18. Look at the paper now shown you, and state whether that is the certificate of deposit enclosed in the letter?
A. It is, sir.
Q. 19. Are you acquainted with the signature of Ammi Baldwin, the cashier?
A. Yes, sir.
Q. 20. Look at that, and state whether that is his signature (handing witness certificate)?
A. That is his signature.
Q. 21. And the endorsement is whose?
A. E. L. Harper's.

The certificate of deposit referred to is offered in evidence on behalf of the plaintiff, and marked Plaintiff's Exhibit 2, March 11, 1891, J. A. S., ex'r.

Q. 22. After receiving Exhibit No. 1 with the enclosures, what did you do?
A. We placed to the credit of the Fidelity national bank $300,000 as a temporary or call loan.
Q. 23. What is the paper I now show you, dated March 2, 1887?
32 A. "March 2, 1887. Credit Fidelity national bank $300,000. Charge temp. Loans, W. J. Q., Jr., C." (meaning cashier).
Q. 24. When was that ticket made?

A. March 2, 1887.

Q. 25. In what book was this sum originally entered?

A. The book of bank credits from which the postings in the ledger are made.

Q. 26. What do you call it?

A. Foreign bank credits.

Q. 27. Do you produce the book in which the original entry was made?

A. Yes, sir (producing book), the entry is as follows: "Fidelity, temp. loans $300,000."

Q. 28. What is the meaning of "temp."?

A. Temporary or call loans; it is an abbreviation of temporary.

Q. 29. Was that item posted into the ledger?

A. Yes, sir; it was posted from this book into the ledger.

Q. 30. Into the general account?

A. Into the general account of the Fidelity national bank, against which they were constantly drawing.

Q. 31. How frequently, in the course of business, was it that you sent the accounts current to the Fidelity?

A. I think semi-monthly; I know monthly.

Mr. JONES: I read from the printed record in the suit in the *supreme* court of the United States for the southern district of New York, in which David Armstrong as receiver of the Fidelity national bank was complainant and the Chemical National Bank defendant, from the testimony of J. Harry Waters, the following:

"Q. Have you in your possession the account current sent the first of April, 1887, sent by the Chemical national bank, giving the account current for March, 1887, between the two banks?

"A. Yes, sir; I have it.

"Q. Please examine it and see whether it contains a credit for the three hundred thousand ($300,000) dollars?

"A. Yes, sir; it does, on March 2nd, on the first page of the account current."

Q. 32. The accounts current sent were a transcript of the ledger account, were they not?

A. They were, sir.

Q. Look at the paper I now show you and state what that is?

A. An account current of the Fidelity National Bank of Cincinnati in account with the Chemical national bank.

33 Q. 34. For what month?

A. For the month of March, 1887.

The account referred to is offered in evidence on behalf of plaintiff and marked "Plaintiff's Exhibit 3," March 11th, 1891, J. A. S., ex'r.

Q. 35. "Exhibit 3" is a copy or a duplicate of the account current sent to the Fidelity national bank?

A. Yes, sir.

Q. 36. If it should be found on inspection of that account current that instead of a loan it was entered as time loan in the account current, it was an error in transcribing?

A. Yes, sir; because the books show that.

Q. 37. Did you answer the letter "Exhibit No. 1," February 28, 1887?

A. Yes, sir.

Q. 38. Did you preserve a copy of your answer?

A. Yes, sir; but I can't put my hand on it.

Q. 39. You didn't preserve a copy of it?

A. No; it was presented, I think, in evidence; a letter of that character was never copied, it was merely an acknowledgment.

Mr. JONES: I read from the printed record in the suit above mentioned the following:

Geo. G. Williams, president; Wm. J. Quinlan, cashier; J. I. Barr ass't cashier.

Chemical national bank.

NEW YORK, *March* 2, 1887.

A. Baldwin, Esquire, cashier.

DEAR SIR: Your favor of the 28th inst. has been received.

We credit Fidelity national bank $300,000, and shall be considerate as to rate of interest when the loan is paid.

I presume that you are aware of the very material change in rates within the past two or three days. Loans for 60 and 90 days on stock exchange collaterals (railroad stocks and bonds) which were ruling at 4½ per cent. last week are now 5½ to 6 per cent. I mention this to show you the present condition of the money market.

Respectfully, WM. J. QUINLAN, JR., *Cashier.*

Q. 40. Have you a letter from the Fidelity national bank under date of May 21, 1887?

A. Yes, sir.

Q. 41. Produce it?

The witness produces the letter.

The letter produced is offered in evidence on behalf of the plaintiff and marked "Plaintiff's Exhibit 4," March 11, 1891, J. A. S., ex'r.

34 Q. 42. How were the moneys placed to the credit of the Fidelity national bank and its account with you drawn out?

A. By drafts of the Fidelity national bank signed officially.

Q. 43. Did you receive the paper mentioned in "Exhibit 4"?

A. Yes, sir.

Q. 44. And did you return the paper which the letter asked to be returned?

A. We did.

Q. 45. The letter mentioned in the exhibit was in substitution of the paper returned?

A. It was, sir.

Q. 46. The paper described in "Exhibit A" annexed to the bill of complaint in this cause is all the paper that the Chemical bank had after the substitution of the paper under the letter of May 21st?

A. Yes, sir.

Q. 47. Did the Fidelity national bank, before the receiver was appointed, ever pay you the $300,000 or any part of it?

A. No, sir.

Q. 48. Has the receiver of the Fidelity ever paid or offered to pay you that sum since he was appointed?

A. No, sir.

Q. 49. Did you know or have any notice at the time that this loan of $300,000 was made, that Mr. Harper had anything personally or individually to do with it?

A. No, sir; emphatically no.

Q. 50. When did you first learn in any way that the notes received as collateral in March and May were not the property of the Fidelity national bank?

A. Many months after. I think, through David Armstrong, receiver.

Q. 51. When you met him in Cincinnati?

A. I think so.

Q. 52. You had no notice or knowledge of that fact when the loan was made?

A. No, sir; we were treating with the bank, not with him at all.

Q. 53. After the second of March, 1887, did the transactions between the Chemical national bank and the Fidelity continue?

A. Yes, sir; they did, daily.

Q. 54. And what was the general nature and character of those transactions?

A. Remittance(s) received from them and drafts paid on their account.

35 Q. 55. Some time in June, 1887, you received other collaterals from the Fidelity national bank?

A. We did, amounting to a million dollars.

Q. 56. A little over a million on their face?

A. A little over a million.

Q. 57. Did you make loans or advances after you received your collaterals?

A. Yes, sir; we did.

Q. 58. How did the Chemical bank treat the collaterals thus received in March and May and June?

A. When we received those in June we treated them as one, as massed; and so with our loans, we treated them as massed loans, massed collaterals. That is the view we took of it, and the way in which we treated it.

Q. 59. You acted on the theory that you had a right to apply the proceeds of all the collaterals to the payment of all the indebtedness or any part of the indebtedness of the Fidelity to the Chemical?

A. We did; and we certainly thought we had such a right.

Q. 60. After the receiver was appointed, did you send accounts current to him?

A. Yes, sir.

Q. 61. And you proceeded to collect what we will call the June collaterals after you received them?

A. We did, sir.

Q. 62. And you finally rendered an account to the receiver of the amounts that you received?

A. Yes, sir; we did.

Q. 63. And applied the proceeds for the payment of the entire indebtedness of the Fidelity to the Chemical bank?

A. Yes, sir.

Q. 64. And remitted to him some cash surplus after that application?

A. We did.

Q. 65. Now, up to that time, Mr. Quinlan, had you seen the receiver in reference to the accounts?

A. No, sir; I had not.

Q. 66. Had you had any correspondence with him in reference to the accounts or in reference to any particular claim, which you or he made, as to your right to make the application of the moneys you afterwards did?

A. Yes, sir.

Q. 67. That was before the rendering of the accounts?

A. Yes.

Q. 68. Look at the paper now shown you. From whom did you receive it?

36 A. From David Armstrong, receiver of the Fidelity national bank.

Paper referred to is offered in evidence and marked Plaintiff's Exhibit 5, March 11, 1891. J. A. S., examiner.

Q. 69. Did you answer that letter?

A. Yes, sir; on the 17th.

Q. 70. Did you keep a copy?

A. Yes, sir.

Q. 71. That letter is dated the 17th and 18th?

A. Yes, sir.

Q. 72. And that is the copy (showing witness letter)?

A. Yes, sir.

The letter referred to is offered in evidence on behalf of the Plaintiff's Exhibit 6, March 11, 1891. J. A. S., examiner.

Q. 73. The disagreement between you and the receiver of the Fidelity led to a litigation, did it not?

A. It did.

Q. 74. It resulted in a suit brought by the receiver against you to account for the June collaterals?

A. Yes, sir.

Q. 75. On the claim that you could not apply the proceeds to the payment of any existing indebtedness or any prior indebtedness?

A. Yes, sir.

Q. 76. And you were beaten?

A. We were beaten.

Q. 77. Then an account was taken of the proceeds of the June collaterals and of the indebtedness of the Fidelity to the Chemical

national bank for all the items exclusive of the three hundred thousand dollar loan and the amount found due to the receiver on that accounting was paid?

A. It was; the payments made to the Chemical on the March and May collaterals formed no part of the accounting.

Recess until 3 p. m.

After recess.

Q. 78. The interlocutory decree for an accounting in the suit above referred to was entered on the 22nd day of January, 1890, and the final decree May 7, 1890?

A. Yes, sir.

A copy of the final decree is hereto attached and marked Plaintiff's Exhibit 7, March 11, 1891. J. A. S., examiner.

37 Q. 79. Were any of the notes of J. W. Wilshire, endorsed by J. V. Lewis, which you held as collateral, paid?

A. Yes, sir.

Q. 80. State what notes and when.

A. Three notes of $25,000 each, paid respectively July 23, August 24 and October 1, 1887, in all $75,000.

Q. 81. Were there any entries of the payment made in your books of account?

A. Yes, sir; to the credit of the general collateral account of the Fidelity national bank.

Q. 82. The collateral account embracing all the collaterals which you have received from the Fidelity national bank?

A. Yes, sir.

Q. 83. As a matter of book-keeping was that the proper entry to make?

A. Yes, sir; I think so.

Q. 84. And these payments were made and those entries before you received from the receiver of the Fidelity, Plaintiff's Exhibit 5?

A. They were.

Q. 85. State upon what theory you acted in making those credits?

A. As I have already stated, we acted upon the theory that the loans were massed and the collaterals were massed.

Q. 86. Perhaps the court won't understand what that means.

A. In other words, that all collaterals received were to be held by us as general collateral for any and all loans and advances made.

Q. 87. State whether or not, up to the time that you credited these amounts as stated, you had received from Mr. Armstrong, the receiver, any intimation of the claim that he would make in reference to the collateral, as to how the proceeds should be applied.

A. I had not; the first intimation was in Mr. Armstrong's letter of November 14th.

Q. 88. And it was after November 14th that he brought his suit against the Chemical national bank for an accounting?

A. Yes, sir.

Q. 89. Look at the paper now shown you and state whether that was received by the Chemical bank.

A. Yes, sir; it was.

Q. 90. Look at the paper now shown you and state whether that was received by the Chemical bank?

A. Yes, sir; it was.

38 Q. 91. About when?

A. About May 19, 1887.

The telegram referred to is offered in evidence on behalf of the plaintiff, and marked Plaintiff's "Exhibit 8," March 11, 1891, J. A. S., examiner.

Q. 92. Look at that paper now shown you and state whether you received that?

A. Yes, sir.

Q. 93. About what time?

A. It was received about May 21, 1887.

Q. 94. Some time in May?

A. Yes, sir; about May 21st.

The letter referred to is offered in evidence on behalf of the plaintiff and marked Plaintiff's Exhibit 9, March 11, 1891, J. A. S., examiner.

Q. 95. When did the Fidelity national bank commence dealing with you, about when?

A. I think it was in the spring of 1886; I think it is in the testimony.

Q. 96. About the time of the organization of the bank?

A. Yes, sir. (After referring to book:) March 4, 1886.

Q. 97. How long did it continue?

A. Till it went into the hands of a receiver.

Q. 98. Did you see E. L. Harper, vice-president of the Fidelity in February or March, 1887, here in the city?

A. He was in the bank once or twice; I have forgotten the exact dates.

Q. 99. Well, did you see him at any time after you received the letter dated February 28, 1887?

A. I can't recall at the moment; I remember Harper being in here once or twice.

Q. 100. The question is as to the time?

A. I couldn't locate it, unless I gave it in the testimony at that time; at that time, it was clear to my mind; whatever testimony I gave then was clear.

Q. 101. Was he in the bank, to your knowledge, or did you see him after you received that letter of February 26th, 1887?

A. I have to give the same answer; if it is in the testimony, I did.

Mr. HERRON: Give your best recollection.

The WITNESS: I have no data in my mind to work upon. (After referring to printed record:) no, sir.

Q. 102. State whether or not E. L. Harper personally made any

representations to you, or to your knowledge to any of the officers of the bank, in respect to the $300,000 which was passed to the credit of the Fidelity national bank on the second of March, 1887?

A. Not until I saw him in Cincinnati.

39 Q. 103. I mean at about the time that was done?

A. Oh, no, sir.

Q. 104. Did E. L. Harper, or E. L. Harper & Co., and, if so, which, have an account with the Chemical national bank?

A. E. L. Harper & Co. had an account with us.

Q. 105. How as to transactions between the Chemical national bank and E. L. Harper & Co., were they kept distinct from the transactions between the Chemical national bank and the Fidelity national bank?

A. Entirely so.

Cross-examination of Wm. J. Quinlan, Jr.

Cross-examined by Mr. HERRON:

Q. 106. What entry was made on the book of the Chemical national bank as to the paper contained in Exhibit 1?

A. Collateral to a loan of $300,000 to the Fidelity national bank.

Q. 107. In what book was that made?

A. In our call loan book.

Q. 108. Will you please produce that book for inspection?

The witness produces the call loan book and points to the entry.

Q. 109. Now read to the stenographer the entry as it appears on that book?

A. Loan No. 1070, March 2, 1887, Fidelity national bank of Cincinnati, $300,000, certificate of deposit Fidelity national bank $300,000, receivables $326,695.30, returned May 19, 1887, $10,000, leaving $316,695.30; returned May 23, 1887, $222,495.30, leaving $94,200; add May 23, 1887, $230,592.46, result $324,792.46 charged account August 25, 1887; the entry in the book reads, those loans reduced $10,000 paid on account May 19, 1887; this was incorrect, for the note was returned to the Fidelity bank and was not paid, and hence that entry was erased.

Mr. JONES: What note?

The WITNESS: It was the Jung Brewing Company note for $10,000, due April 24, 1882; on the same day; that was Parson's entry, and I discovered it and sent it back to the Fidelity; then I saw on the book charged account August 25, 1887; that was because there was enough money transferred from the collateral account to make that entry.

Q. 110. What do you mean by "charge account"; charge what account?

A. Charge the general account.

Q. 111. Against the Fidelity national bank?

A. Against the Fidelity national bank; having transferred

40 sufficient from the collateral account, we placed sufficient money to the general account to pay the loan of the Fidelity.

Q. 112. Did these collaterals appear in any other book except the one you have shown?

A. No, sir.

Q. 113. Did you see those collaterals personally?

A. Yes, sir.

Q. 114. Can you tell me how they were endorsed?

A. I cannot. I think that——

Mr. JONES: You have some of them here, haven't you?

The WITNESS: Yes, some of them are in Worthington's hands.

Mr. HERRON: Refresh your memory, then.

The WITNESS (producing papers): I have copies of the Whitely, Fassler & Kelly notes; they are endorsed by E. L. Harper & Co.

Q. 115. And the notes which you have are endorsed?

A. Are endorsed A. P. Gahr.

Q. 116. Was any of the collateral paper endorsed by the Fidelity national bank?

A. I couldn't say,

Q. 117. Well, what is your best recollection?

A. I think not.

Q. 118. Where paper has been discounted by the bank, is it not usual to have on the paper a mark indicating that it belongs to the bank?

A. Not always.

Q. 119. Well, is it not usually done?

A. It is done by some banks.

Q. 120. Isn't it the general rule among banks?

A. Probably it is, the major part of them.

Q. 121. Had any of this paper any mark indicating that it belonged to the Fidelity national bank in the way I have indicated?

A. I have no recollection.

Q. 122. Have you any recollection of any of the paper having any such mark?

A. No, I have not.

Q. 123. Has the paper which you have now shown me any such mark?

A. (Looking at paper.) I wouldn't know how the Fidelity bank would mark its discounted paper.

Q. 124. Was there any mark at all of any kind?

A. I see no mark.

Q. 125. Have the copies which you have of the Whitely, Fassler & Kelly paper any such marks?

A. No, sir.

Q. 126. To go back, you said the reason this loan was
41 charged to general account on August 25th, was that you had then received sufficient collateral to pay the loan, is that true?

A. The collateral account showed a sufficient amount to credit, or more than enough—more than $300,000, the amount of the loan—and as, if it remained to the credit of collateral account we would be compelled to reserve 25 per cent. legal tenders, by placing that credit to the general account with a loan, we saved that reserve.

Q. 127. Now on the twenty-fifth of August, 1887, what amount had been collected from the collateral account altogether, and what was the state of the general account after you charged this loan?

A. I will have to refer to the books. (After referring:) The collateral account showed a credit of $302,046.60, and we transferred from the collateral account to the general account $302,000.66, and after charging the loan of March 2d of $300,000, it left a debit balance of $94,759.93.

Q. 128. Then as a matter of fact, there was not sufficient paid in to collateral account at that time to satisfy this loan when it was charged up?

A. Massing the two accounts, no, there was not.

Q. 129. You say that E. L. Harper & Co. had an account with the Chemical national bank, when did that account begin?

A. February 12, 1885.

Q. 130. According to your best recollection, did this account continue during the existence of the Fidelity?

A. I know it did.

Q. 131. Was it a large and active account?

A. Quite so, for a mercantile account.

Q. 132. Did that firm get paper discounted by the Chemical national bank?

A. They did.

Q. 133. To what extent, generally, without giving the items exactly?

A. Fifty to seventy-five thousand dollars—it is a pretty hard matter to say—probably more.

Adjourned to Thursday, March 12, 1891, at 10.30 a. m.

NEW YORK, *March* 12, 1891.

Met pursuant to adjournment.

Present: Counsel as before.

Continuation of the cross-examination of WILLIAM J. QUINLAN, JR.:

The WITNESS: I desire to make an explanation of my
42 answer to my Q. 111, in which I stated, "We place sufficient money to the general account to pay the loan of the Fidelity." We transferred $300,000 from the collateral account to the general account, to allow of the debit*ed* or charge of the loan of the Fidelity to the general account.

Q. 134. Refer to the account of E. L. Harper & Co. on your ledger, and state what that says of the amount of discounts for them between May 17, 1886, and January 15, 1887.

A. Discounts, $114,000; temporary loans, $100,000.

Q. 135. What loans were made after January to him?

A. A loan of $50,000 on April 13th—a temporary loan, call loan.

Q. 136. Will you please have made and attached to your deposition a copy of your ledger account with E. L. Harper & Co., between May 16, 1886, and its close?

A. I will.

The account referred to is offered in evidence on behalf of defendant, and marked Defendant's Exhibit 10, March 12, 1891, J. A. S., ex'r.

Q. 137. How intimately acquainted had you been with E. L. Harper, or were you acquainted with E. L. Harper during the time that this account was continued?

A. A very slight acquaintance—frequent remittances—I did not meet him personally more than probably twice; I can't recall more than two or three times in the whole transaction.

Q. 138. What knowledge had you as to his financial condition?

A. The statement of the mercantile agency; in which he was believed to be worth $700,000.

Q. 139. Did you know in what business he was engaged?

A. Yes, we knew what business he was in.

Q. 140. State what you learned, please?

A. May I be allowed to refer to the agency report? I think he was in the iron and hardware business; I don't know what they called him.

Q. 141. Refer to any report. Wasn't it the manufacture and sale of pig iron?

A. That was it; yes, sir.

Q. 142. And manufacturing iron, but he never was in the hardware business?

A. Well, pig iron; I supposed he was a reputable merchant.

Q. 143. Prior to March, 1887, had the Fidelity national bank borrowed any money of the Chemical national bank?

A. I don't recall.

43 Q. 144. Can you refer to the account and answer the question?

A. Yes, I can.

Q. 145. Please do so.

A. (After referring to account.) No, sir; nothing prior thereto.

Q. 146. Was there any correspondence with any other persons in reference to that loan except Mr. Harper?

A. No, sir.

Mr. JONES: On either sides.

Mr. HERRON: I mean, did the bank correspond with any person except Mr. Harper?

The WITNESS: I acknowledge the loan to Ammi Baldwin, cashier.

Q. 147. As in the letter that you have already testified to?

A. Yes, sir.

Q. 148. What agreement was there beforehand as to the security on which that loan should be granted?

A. None whatever.

Q. 149. Had you no knowledge as to what the security would be prior to receiving the papers from Mr. Harper?

A. None whatever; I didn't know that he even applied for a loan.

Q. 150. Then the reception of the certificate of deposit and other bills receivable in the letter of February 28th, was the first knowl-

edge that you had that the Fidelity bank would certainly apply for a loan, and the character of the security that was offered?

A. The very first.

Q. 151. When you received that certificate of deposit, was there anything on its face to show that the Fidelity national bank had any interest in it?

A. The inference was that E. L. Harper had deposited $300,000 with the Fidelity national bank; that is what the certificate says.

Q. 152. And to whom did that certificate belong as far as you could judge?

A. We supposed it was a transaction with the Fidelity national bank altogether; it is a customary way for banks in the West and South to borrow in that manner for several reasons: first, it increases their deposit line, and in the second place they do not have to show a rediscount or a loan, and hence it is a very common thing for loans to be made of that character—a certificate of deposit with a mass of collaterals attached.

Q. 153. Then do I understand that you mean that the certificate is a manufactured piece of paper, without money being deposited as the basis of it?

44 A. We never know; we don't make the loan on the certificate of deposit.

Q. 154. Well, you say there is a custom to borrow money in that way?

A. Yes; it is very common.

Q. 155 That is, by issuing a certificate of deposit?

A. Very common.

Q. 156. Is it customary in such cases that a certificate of deposit shows money deposited in the bank as a basis of the certificate?

A. I don't know; we don't know what happens at the other end.

Q. 157. Is that all the answer you can make to that question, Mr. Quinlan?

A. Yes, sir.

Q. 158. Then you did not know that that certificate of deposit was different from what appeared to be on its face?

A. We knew nothing about it; we received it for what it purported to be.

Q. 159. Now, is it customary in such cases as you have testified that these certificates of deposit shall be made to the order of the officer of the bank or the order of the person from whom the money is to be borrowed?

A. May I look at other certificates from other banks which we have here at present, in order to be certain?

Q. 160. Yes, certainly.

A. (After looking.) I have run over several which we have from other banks, and they are made out in various ways; sometimes made by so and so, namely, one of the officers of the bank, but not describing him as an officer, payable to the order of the Chemical national bank; sometimes they state the Chemical national bank has deposited so much to the order of W. J. Quinlan, Jr., cashier, but when these certificates of deposit come, we don't criticise them closely;

we virtually care nothing about it; we know their object; their object is, as I have already stated, to borrow the money, but not to make it appear on their books as a loan, having the double object in view to swell their deposits and not to have to report a loan, and hence we don't criticise the phraseology of the certificates.

Q. 161. Did you make any inquiry at all as to the ownership of this certificate, or the manner in which it had been issued?

A. None whatever.

Q. 162. Was there any action of the bank directors or committee upon this loan?

A. In this bank?

45 Q. 163. Yes, sir.

A. No, sir; excepting the president and myself; excepting this, that occasionally, two or three times a week, the directors will come in and check up our loan book and our discount book with their initials, stating that they had approved what the president and cashier had done. We have a board meeting but once a month. The board, of course, ratified our action in checking the book.

Q. 164. Then this loan originally was simply acted upon by the president and cashier?

A. It was, as is customary in this bank.

Q. 165. Did you examine critically the collaterals which you received at the same time?

A. We examined them.

Q. 166. Had you any knowledge as to the responsibility of the parties to those collaterals?

A. We thought we had; we knew several of them by name well.

Q. 167. That is, the makers of the collaterals?

A. That is, the makers of the collaterals.

Q. 168. Did you notice anything at that time on the collaterals to indicate the persons to whom they belonged?

A. We did not; we supposed they were the property of the Fidelity national bank, as the letter purports which enclosed them.

Q. 169. But you did not notice anything upon the paper that would indicate that they did belong to the Fidelity national bank.

A. I did not examine them with that object in view.

Q. 170. Well, did you notice anything?

A. No, sir.

Q. 171. Did you make any inquiry in regard to the collaterals at all?

A. None whatever; never do, unless we have doubts as to the strength of the paper.

Q. 172. You state that the collaterals of March and of June were all massed?

A. We treated them as a whole.

Q. 173. Do you mean that they were placed together in one package?

A. They were kept distinct, so that there would be no question as to the date of receipt.

Q. 174. Then what you mean by massing them is, that when paid they went into the one account?

A. They went into the general collateral account.

Q. 175. There was no other massing except the manner in which they were credited after being paid?

A. There was no other massing possible, was there?

46 Q. 176. You are answering the question. Was this done until after the failure of the Fidelity national bank?

A. The collateral account was not opened until July 6, 1887, when the first note matured and was paid.

Q. 177. Then there was no massing of either the collateral or the loans in any way until after the failure of the Fidelity?

A. We treated them in our minds as a whole loan—as a total amount loaned against a total amount of collaterals; in fact, the loan and all the subsequent advances would never have been made had it not been that we supposed we had a lien on all the collaterals for all the loans.

Q. 178. Now, was there any massing of either the collaterals or the loans until after the failure of the Fidelity?

A. I think I have answered the question.

Q. 179. I don't think you have; you can answer categorically whether there was or not?

A. I don't know that I can answer it more fully than I have already stated, that the collaterals were kept in separate packages for convenience, and that the collateral account was not opened until July 6, namely, when the first paid note was placed to the credit; the collateral account couldn't be opened before there was a credit. If I knew just exactly what you wanted to get at, Mr. Herron, I would answer it more specifically.

Q. 180. Then the only massing prior to that time was in your mind, was it not?

A. Yes, and we treated it, in fact, we considered it so.

Q. 181. Give us any facts that appear on your books or in your letters or anything else, showing that you treated them as one?

A. I have already stated that the second loan and subsequent advances wouldn't have been made, except upon the supposition that we had a banker's lien upon any and all collaterals.

Q. 182. Was that supposition expressed in any letter to the Fidelity bank or any of its officers or otherwise?

A. It was expressed in a letter from Mr. Williams, written by him personally, of which no copy was taken, and which letter Mr. Armstrong has said has never come to light.

Q. 183. Is that the letter, about which Mr. Williams testified in his examination in the case of the United States circuit court in New York?

A. That is the letter to which he referred.

Q. 184. Did you at any time indicate to Mr. Armstrong, the receiver of the Fidelity, that you intended to mass the collaterals and loan as one?

47 A. Allow me to look at my private letter book and see whether I did; I don't know; I presume I did. (After referring), in my special letter book I find no copy of any letter.

Q. 185. Have you any recollection of any notice to Mr. Armstrong of such a claim?

A. No distinct recollection as to day and date, but the presumption is that I did, because it was clearly in our minds here that we felt that way.

Q. 186. Well, I was not asking for presumption; I was asking as to your recollection, Mr. Quinlan. Have you any recollection at all of writing any such letter?

A. No distinct recollection.

Q. 187. And you find no copy of any such letter on your books?

A. I find no copy, no, sir.

Q. 188. You never testified before in the case in the United States circuit court in New York of any such notice, did you?

A. No, I think not; I don't think the question was ever put.

Q. 189. What reason did you give for not presenting for payment the note of J. W. Wilshire, endorsed by J. V. Lewis? I mean in your testimony here?

A. Owing to the receipt of a letter along about May 21, 22 and 23, from the Fidelity national bank, asking us not to present the collateral paper, that would be provided for at the other end.

Q. 190. This note didn't mature for more than a month after the Fidelity had failed, did it?

A. It matured June 28th.

Q. 191. Now, that letter requested you to return the note to Cincinnati, did it not?

A. It did (reading from letter): "Will want all returned here without presenting, as we advised parties to arrange payment here."

Q. 192. Now, did you return it to Cincinnati?

A. The twenty-eighth of the month came and it was not returned, and that night I discovered it, and wired Wilshire and Lewis at the address, where I supposed he (they) could be found—namely, Cincinnati—as to the fact that the note was held.

Q. 193. The note was payable actually in Cincinnati, was it?

A. It was.

Q. 194. Now, is it not a fact, Mr. Quinlan, that the real reason why the note was not presented for payment, was that you overlooked it altogether?

48 A. The loans were in the hands of the loan clerk; he did not call my attention to the note, but he was acting upon the presumption that this was authority; and it so happened that this afternoon I had some time, and I got out the papers and ran them over, and was more than surprised to find this piece of paper on hand; there is the whole story; and I at once—it was then about half past four—did my duty as an officer of the bank, and notified the parties. There is the whole thing.

Q. 195. Then the loan clerk neglected to return this paper to Cincinnati, as directed by that letter, if the letter was the authority.

A. He did not return it; it sometimes happens in cases of this kind that notes are not returned in time to reach the place of payment.

Q. 196. When did you ascertain that the Fidelity bank failed?

A. I think on the twenty-first of June, the twenty-first or the twenty-second.

Q. 197. On what day were you first garnisheed by the Montreal bank, in a suit brought by it against the Fidelity?

A. On the 18th.

Q. 198. What was the amount of that suit?

A. $200,000.

A. 199. When and from whom did you first learn that this paper sent to you as collateral for this loan did not belong to the Fidelity national bank?

A. I think from Mr. Armstrong, when I saw him in Cincinnati; at any rate, I got some of the facts from him, it must be in the early part of December, 1887.

Q. 200. Has the account between your bank and the Fidelity been closed on your books, and in what way?

A. The account was closed when we sent a check to Receiver Armstrong for the balance, namely, $33,809.89, November 26, 1887, but of course, when he compelled us to account to him for the collaterals received in June, 1887, we had again to open an account, placing it upon what we call the general ledger—not upon the bank ledger.

Q. 201. Did you open such an account?

A. We opened that account.

Q. 202. Have you got that account here?

A. Yes (producing account).

Q. 203. Will you please read the account as it stands now on your country ledger, giving each item debit and credit since the closing of the account about which you have just testified on November 26, 1887?

49 A. I hereto attach a copy of that account.

Account referred to is offered in evidence on behalf of defendant, and marked Defendant's Exhibit 11, March 12, 1891. J. A. S., ex'r.

The WITNESS: On May 22, 1890, we debited the account of receiver of Fidelity National Bank of Cincinnati, $272,796.07, being the amount paid S. A. Walker, solicitor, payment made under decree of Judge Wallace; on May 22, 1890, we credited the same account $47,796.07, for which we received nothing, the same having been debited to profit and loss previously; on June 17, we received cash from David Armstrong, receiver, on account of Champion Machine Company, $4,481.49, and bonds of the Champion Machine Company, $5,800; on the same date, June 17, bonds of Whitely, Fassler & Kelly, $9,600; and on December 31, 1890, we credited the receiver of the Fidelity national bank, $50,000, charging profit and loss?

Q. 204. Attach also to your answer a copy of the same account from the general ledger, signed in the name of receiver of the Fidelity national bank?

The account referred to is offered in evidence on behalf of defendant, and marked Defendant's Exhibit 12, March 12, 1891, J. A. S., ex'r.

Q. 205. The 272,000 and odd dollars charged in the account, about which you have just testified, embraces the interest on the amount decreed to the receiver from the time the collections were made until the time when the payment was made, does it not?

A. Yes, sir.

Q. 206. What was the balance of interest between the debit and credit sides of the account?

A. $35,224.31, and in addition there was interest from May 7th to May 27th.

Q. 207. Are all the balance of the collaterals remitted to you on March 2, the payment of which have not been credited in this account, still held by the Chemical national bank?

A. Yes, or by our representative, Mr. Worthington.

Q. 208. Have any other sums been received on account of that collateral, except the sums which are credited in this account?

A. None whatever.

Redirect Examination by *Mr. Quinlin.*

By Mr. JONES:

Q. 209. Do you know anything about the value of the bonds of the Champion Machine Company?

A. No, sir; I think they have not very much value at the present moment.

50 Q. 210. How as to the value of the Whitely, Fassler & Kelly bonds?

A. Still less.

Q. 211. They have no market value, so far as you know, either of them?

A. No, sir; I do not know of any market value.

Q. 212. You have referred in a part of your testimony to entries in your call-loan book, and have spoken of the proceeds of collaterals collected up to August 25, 1887; what part of the proceeds was from June collaterals?

A. $252,046.60.

Q. 213. And afterwards, as I understand, you were compelled to account for the proceds of the June collaterals to the receiver.

A. We were, sir.

Q. 214. In a suit which he brought against the bank?

A. Yes, sir.

Q. 215. The account of the receiver as it stands upon your books has been referred to and the schedules annexed; state as a matter of fact how much money you have received on account of that loan of $300,000.

A. That $75,000 from Lewis and $4,481.49 from the receiver.

Q. 216. Were those sums, with the bonds of the Champion Company and the bonds of Whitely, Fassler & Co., all that you have received on account of the collaterals delivered to you in March and May, 1887?

A. Yes, sir; all.

Q. 217. That is all the cash that has been paid to you on those collaterals?

A. Yes, sir.

Q. 218. Did you know anything about the ownership of the collaterals enclosed in the letters of February 28 and May 21, 1887, except the fact that they came to you enclosed in letters from the Fidelity national bank?

A. No, nothing else.

Q. 220. You persumed they belonged to the bank at that time?

A. Certainly; I had no reason to think otherwise.

It is agreed that the Chemical national bank has entered suit against John V. Lewis upon the unpaid note of J. W. Wilshire, endorsed by Lewis, for $25,000, in the superior court of the city of New York; that Lewis has appeared and answered, and that the testimony is being taken in Ohio.

Recross by Mr. HERRON:

Q 221. Mr. Quinlan, you stated that the bank held other paper of J. V. Lewis besides the four notes; what paper was
51 that?

A. We held a note of J. V. Lewis, endorsed by Wilshire, Eckert & Co. and J. Wilshire, for $25,000, due August 20, 1887. We held one of J. V. Lewis, endorsed by J. W. Wilshire, for $25,000, due September 21.

Q. 222. On what account were those notes received by the Chemcal national bank?

A. In the June collaterals.

WM. J. QUINLAN, JR.

Subscribed and sworn to before me this 16th day of March, 1891.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Deposition of Geo. G. Williams.

GEORGE G. WILLIAMS, of lawful age, being by me first duly cautioned and sworn as a witness on behalf of the plaintiff, deposes as follows:

By Mr. JONES:

Q. 1. You are the president of the Chemical national bank?

A. I am.

Q. 2. And have been for how long?

A. Going on thirteen years.

Q. 3. I show you Plaintiff's Exhibit 1; please state whether you recollect seeing that before?

A. Oh, yes; I remember that.

Q. 4. Do you remember that there were enclosures in it of a certificate of deposit and notes?

A. Yes, sir; a certificate for $300,000 and notes.

Q. 5. What was done upon the receipt of that letter and the enclosures by the Chemical bank?

A. Well, Mr. Quinlan and I talked it over and finally agreed to make the loan.

Q. 6. Of how much?

A. Three hundred thousand dollars.

Q. 7. On what day was it made, Mr. Williams?

A. The second of March.

Q. 8. State what, if anything, you know in reference to the ownership of the notes mentioned in the exhibits?

A. I had no knowledge further than that they came to us from the Fidelity national bank, and we knew of no other ownership in them.

Q. 9. And you inferred from that that they belonged to
52 the Fidelity national bank?

A. Yes.

Q. 10. Did you know or have any notice that any other person than the Fidelity national bank had anything to do with this loan?

A. None whatever.

Q. 11. And you did not see Mr. Harper personally about it?

A. No, sir; I never saw him but once in my life.

Q. 12. You recollect generally of the fact that there were collaterals afterwards which were substituted for some mentioned in Exhibit No. 1?

A. Yes, sir.

Q. 13. Did you afterwards, in June, receive a large amount of collateral paper from the Fidelity national bank?

A. We did.

Q. 14. Amounting to how much?

A. About a million or more.

Q. 15. On what theory did the bank act in respect to all of the collaterals received—in respect to its right to apply the proceeds of the collaterals in payment?

Objected to as incompetent.

A. I supposed that they were secured for loans or advances to the Fidelity bank.

The answer is objected to as incompetent.

Q. 16. Did the bank act upon that theory until the receiver brought his suit?

Objected to as incompetent.

A. Yes.

Cross-examination of Geo. G. Williams.

By Mr. HERRON:

Q. 17. How long have you been engaged in the business of banking, Mr. Williams?

A. Fifty years next December.

Q. 18. When these collaterals were received, did you examine them personally?

A. I did.

Q. 19. You saw the certificate of deposit?

A. I did.

Q. 20. And you saw also the collateral bills receivable?

A. I did.

Q. 21. Had there been any previous correspondence with Mr. Harper in reference to this loan?

A. My impression is that he had written about a loan at a low rate of interest; he speaks about it in that letter.

Q. 22. Could you tell from the certificate of deposit whom it belonged to?

53 A. I supposed it belonged to the bank; I had no reason to suppose otherwise.

Q. 23. Did the language of the paper indicate the ownership in the bank of that certificate of deposit?

A. The ownership of it was clear from its having been transmitted to us by the proper officer of the bank.

Q 24. What, then, did you suppose, when you received that, your certificate of deposit represented?

A. I supposed it represented a loan.

Q. 25. From whom?

A. From the Fidelity national bank.

Q. 26. To whom?

A. From the Chemical bank to the Fidelity bank.

Q. 27. Is it customary, on banks discounting paper, to indicate on it the fact that it is discounted paper?

A. We do on ours. Hold on—let me see. We used to put a stamp on, but we have omitted it of late—for some years. We used to put a stamp of "D," or some mark, but have omitted it of late years.

Q. 28. The question was, whether it was not the general custom among banks?

A. I don't know; I think some do and some do not.

Q. 29. Is it not customary to put a number on indicating the number of the discount?

A. No; number of the note we put on, not the number of the discount.

Q. 30. It is customary, then, to put on it the number of the note?

A. The book usually has a number on it, and the discount note is numbered, but the collateral is not numbered; a collateral note has no number on it to indicate that it is different from an ordinary note.

Q. 31. But when a note is discounted at your bank, there is a number put on that is different from ordinary collection paper?

A. A note discounted is numbered, but a collateral note is not.

Q. 32. My question is, if the discounted paper has a number on it indicating that it is a discounted note?

A. No, it does not indicate that it is a discounted note; it has a number by which we can refer from the note to the book; look at

the note and see the number, and then we can refer to it on our book; that is all.

Q. 33. Did you place any such number on collection paper?

A. We did on city collection notes, but not on country collection notes.

Q. 34. What book did you refer to in the question before the last, as to numbers agreeing?

54 A. It is an offering book, where notes are registered when they are discounted.

Q. 35. And then a number is given to each note on that book and the same number placed on the note?

A. On city notes, yes.

Q. 36. On discounted notes; I am not asking about collection, but discounted notes now.

A. I would like to go and see whether we do it on country notes as well as on city; we do on city notes, but I will just see what the clerk does, because that is purely clerical. (After referring.) You asked me in regard to putting the marks on the notes; I find that we used to put a mark on all the notes, but we don't do it now; we put a mark simply on the country notes. For instance, that is a country mark and is marked with a "D" (producing note).

Q. 37. Is that a collateral note or a discount?

A. No, it (is) a discount note; that is merely to distinguish them when we send them away in the mail. Now this is a city note (producing note), and is merely marked with a number and with the due date up there.

Q. 38. Then I understand, in city paper, when you discount it, you put on the back of it a number and the date when due in red ink?

A. Yes, sir.

Q. 39. Had the papers sent you by the Fidelity national bank as collateral any such mark on any of them?

A. I don't know; I didn't look at it.

Q. 40. How much did you look at the paper?

A. I looked at the security mainly.

Q. 41. What do you mean by the security?

A. The character of the note.

Q. 42. You mean the makers of the notes?

A. The makers and endorsers.

Q. 43. Do you remember who were the makers and endorsers of the notes at all?

A. I remember some of them.

Q. 44. Do you mean makers or endorsers?

A. Both.

Q. 45. Who were endorsers of any of that paper?

A. J. V. Lewis.

Q. 46. Any others?

A. I don't remember any others.

Q. 47. When you receive paper as collateral on a loan is it usual to require the party to whom the loan is made to endorse it?

A. No, sir.

Q. 48. Was any of this paper endorsed by the Fidelity national bank?

55 A. I don't remember that it was.

Q. 49. Did you make any inquiry at all in regard to this paper at the time the loan was made?

A. Wilshire and Lewis were both depositors with us, and I canvassed their credits so far as I could, in talking with Mr. Quinlan; that is all.

Q. 50. Had the Fidelity national bank ever borrowed any money of the Chemical prior to that time?

A. I think not; this was the first loan so far as I remember.

Q. 51. Then you did not regard this certificate of deposit as one usually issued by a bank, but simply as an acknowledgment of indebtedness to your bank?

A. I regarded it as a loan in place of a note—as evidence of a loan in place of a note, which is common with banks borrowing here.

Q. 52. When banks borrow from you on certificates of deposit, how are these certificates usually drawn?

A. They are signed by the cashier; we don't scrutinize the rest of it.

Q. 53. In whose favor are they usually drawn?

A. I should say they would be drawn in favor of the Chemical bank, but we don't look at that.

G. G. WILLIAMS.

Subscribed and sworn to before me this sixteenth day of March, 1891.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Adjourned to Friday, March 13, 1891, at 10.30 a. m.

Notary's Certificate.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

United States Circuit Court, Southern District of Ohio, Western Division.

CHEMICAL NATIONAL BANK, Plaintiff,
vs.
DAVID ARMSTRONG, as Receiver of the Fidelity National Bank, Defendant. } No. 4339.

I, John A. Shields, United States commissioner duly ap-
56 pointed by the circuit court of the United States for the southern district of New York, hereby certify that on the days indicated in the foregoing depositions at the office of the Chemical national bank, 270 Broadway, in the city of New York, I was attended by Charles Jones, Esq., of counsel for plaintiff, and by John W. Herron, Esq., of counsel for defendant, and by the witnesses, Wm. J.

Quinlan, Jr., and George G. Williams; that the said witnesses, who were of sound mind and lawful age, were by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause, and gave their testimony, which, upon consent of counsel for the respective parties, was taken down by a stenographer appointed by me for that purpose, and the stenographic notes of the testimony having been reduced to writing by a typewriter, and the same having been read over by the respective witnesses, they severally said which and swore to the same in my presence.

I further certify that the reason for taking the foregoing depositions is that the witnesses are material and necessary in the cause in the caption of the said depositions named, and that they live at a greater distance than one hundred miles from the place of trial of the within-entitled cause.

I further certify that a notification of the time and place of taking the said depositions signed by Wm. Worthington, solicitor for plaintiff, was made out and served on John W. Herron, attorney for defendant, as appears from said notice which is hereto annexed.

And I do further certify that I am not of counsel and attorney for either of the parties in the said depositions and captions named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this eighteenth day of March, A. D. 1891, and of the Independence of the United States the one hundred and fifteenth.

JOHN A. SHIELDS,
United States Commissioner Duly Appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[SEAL.]

Depositions of sundry witnesses, taken before me, Albert Schwartz, a notary public within and for the county of Hamilton, State
57 of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the plaintiff in an action pending in the circuit court of the United States, southern district of Ohio, western division, in which The Chemical National Bank is plaintiff and David Armstrong, receiver of the Fidelity national bank, is defendant, Wm. Worthington being present on behalf of plaintiff and John W. Herron on behalf of defendant.

Deposition of Joseph W. Wilshire.

JOSEPH W. WILSHIRE, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

By WM. WORTHINGTON, Esq.:

Q. 1. State your name, age and place of residence?

A. Joseph W. Wilshire; 46 years of age; engaged in the manufacture of ice; residence, Cincinnati, Ohio.

Q. 2. Do you recollect the making of four promissory notes in February, 1887, drawn by you to the order of John V. Lewis, each for the sum of $25,000.

A. Yes, sir.

Q. 3. State the circumstances under which these notes were made and what consideration was paid to you or John V. Lewis to your knowledge for them, and at what times, as nearly as you can recall, the notes matured?

A. In the latter part of February, 1887, Mr. E. L. Harper, vice-president of the Fidelity national bank, asked me if it would be convenient to have a meeting at my residence on Oak street, Mt. Auburn, between Mr. Lewis, Mr. Harper and myself. I said that it was, and along about eight o'clock in the evening of the twenty-fifth of February, I think it was, as I remmember it, Mr. E. L. Harper and Mr. John V. Lewis met at my residence on Oak street. After a conversation between Mr. Lewis and Mr. Harper—the result of that conversation was that we executed four notes of $25,000 each. As I remember it now, I was the maker of the notes to the order of Mr. John V. Lewis, and he then and there became the endorser. The notes were then placed into the hands of Mr. E. L. Harper, and he took them from the house.

Q. 4. What consideration, if any, was paid to you by Mr. Lewis or Mr. Harper for drawing the notes, or by Mr. Harper to Mr. Lewis for endorsing and delivering them to him?

A. There was no consideration whatever paid to me.
58 Whatever arrangements there may have been between Mr. Harper and Mr. Lewis, I know nothing of; there was nothing to my knowledge.

Q. 5. What conversation took place between Mr. Lewis and Mr. Harper at that time, within your hearing, in reference to these notes?

A. I don't know that I could state the details of the conversation that took place. I could give my recollection of it in substance, which was to the effect that Mr. Harper required additional funds to carry on a certain deal which he was carrying on at that time through the firm of Wilshire, Eckert & Co., his brokers; he further stated that it was inconvenient, or that he did not have the amount of ready money at hand, but that he could use paper, discounted either in his own bank or elsewhere, to get this money, and as I understood it at that time, the notes were made for that purpose, the understanding being that the notes were to be discounted, and the proceeds placed to the credit of Wilshire, Eckert & Co., to be used as occasion might require, from time to time, to margin the deals that Mr. E. L. Harper was then carrying through the firm of Wilshire, Eckert & Co., in Chicago.

Q. 6. What, if anything, was said as to who was to take up the notes at maturity?

A. I don't remember of anything being said on that point at all.

Q. 7. What, if anything, was said upon the subject of what consideration, if any, John V. Lewis was to have for endorsing the notes?

A. I heard nothing at all in regard to that point.

Q. 8. What interest, if any, did John V. Lewis have in the deal which you have spoken of as being conducted through Wilshire, Eckert & Co?

A. Nothing, to my knowledge; no interest whatever.

Q. 9. Did Mr. Harper take the notes away with him when he left your house?

A. Yes, sir.

Q. 10. Were you a member of the firm of Wilshire, Eckert & Co?

A. Yes, sir.

Q. 11. Have you stated all that you recollect as to what was said, or was done, on that occasion?

A. All that I recollect; yes, sir.

Q. 12. Do you recollect for what period of time the notes ran?

A. My impression is, three, four, five and six months.

Q. 13. Did you give any other notes maturing at intervals of three, four, five and six months, after February 25, 1887, drawn by you to the order of John V. Lewis, for the sum of $25,000?

59 A. Yes, sir; let me think about it; there were other notes given at that time, but I can't recollect how many were given, or who the maker and who the endorser was, but I have among my papers a memorandum to that effect, which I presume I can get; but I remember whatever the notes were, they were in the possession at the time of John V. Lewis.

Q. 14. That whatever which notes were?

A. Whatever these other notes were that were given, as I remember were in the hands of John V. Lewis.

By consent, the further taking of the depositions was adjourned to tomorrow, May 2nd, at 9 o'clock, a. m.

MAY 2ND, 1891.

Q. 15. Mr. Wilshire, have you examined, since the adjournment, to see whether there were any other notes given by you to the order of John V. Lewis for the sum of $25,000, maturing upon the twenty-eighth day of June, 1887?

A. Yes, sir; I have examined my memorandum.

Q. 16. With what result?

A. And find that there were none; no others,

Q. 17. Were the proceeds of the four notes which you have spoken of as having been made on February 25th, by yourself to the order of Lewis, or of any of those notes, ever placed to the credit of Wilshire, Eckert & Co.?

A. Not to my knowledge.

Q. 18. Are you familiar with the books of Wilshire, Eckert & Co.?

A. Yes, sir.

Cross-examination of Joseph W. Wilshire.

By Mr. J. W. HERRON, Esq.:

Q. 19. How long had you known Mr. John V. Lewis, at that time?

A. For seven or eight years.

Q. 20. What business relations existed between you and him, or your firm and him?

A. Mr. Lewis frequently, or not frequently, occasionally gave us orders to buy grain for him in New York and St. Louis.

Q. 21. Was not Mr. Lewis in the habit, or had he not been for several years, of speculating in wheat or grain?

A. He had given us orders to buy grain through all the seven or eight years I knew him.

Q. 22. Do you know whether he bought through other firms during that time?

A. No, sir.

60 Q. 23. Had you never talked to him about it?

A. Well, he conversed with me in regard to his business. I don't remember of his ever citing any case in which he bought through other firms, in regard to grain or stocks.

Q. 24. Do you know that he had dealt—speculated—in grain or wheat in connection with Mr. Harper?

A. No, sir; I did not.

Q. 25. Did you never hear Mr. Lewis speak of—speak of his connection with Harper in grain speculation?

A. No, sir; never.

Q. 26. Don't your books show that Mr. Lewis was at that time connected with Mr. Harper in the purchase of wheat?

A. No, sir; not to my knowledge.

Q. 27. Where are the books of Wilshire, Eckert & Co.?

A. Last, when I saw them they were in the hands of Mr. Baker.

Q. 28. Did you ever examine them with reference to that point; as to Mr. Lewis' connection with Mr. Harper's dealing?

A. Never made any careful examination in regard to the deal book, or memorandum of deals; Mr. Eckert kept that entirely, but I have looked over it frequently.

Q. 29. During the time which these notes had to run, did you carry wheat for Mr. Lewis?

A. My impression is that we were carrying some wheat for him.

Q. 30. Have you any impressions as to what amount?

A. I cannot say as to the amount.

Q. 31. At the time you were carrying wheat for Mr. Harper?

A. Yes, sir.

Q. 32. How did it come that Mr. Harper made the appointment with Mr. Lewis to meet you at the time you speak of?

A. That I don't know.

Q. 33. Did he state when he asked to have the meeting with Mr. Lewis, what the object of the meeting was to be?

A. No, sir; I don't know that he did. The time he made the

appointment, or asked me if it would be convenient, was between the hours of one and two, when I went in to make my deposit in the bank. He was very busy and he just said—he asked me if it would be convenient for him and Mr. Lewis to meet me at my house and talk over the matters. I said it would.

Q. 34. He stated nothing else except to talk over matters?

A. That is as I remember it.

61 Q. 35. Didn't he say what matters he desired to talk over?

A. I don't know; the result of the conversation was that those papers were executed.

Q. 36. Didn't you know that it was to talk over matters connected with the wheat deal?

Objected to by Mr. Worthington, Esq., attorney for plaintiff.

A. I may have presumed it was for that purpose, because I had no other business with Mr. Harper.

Q. 37. You had no other business with Mr. Harper except for the purchase of wheat for him?

A. That was all.

Q. 38. Was Mr. Lewis living here at that time?

A. No, sir; I think not.

Q. 39. Where was he living?

A. His house—he had a house here, but he was not occupying it, and he was in the east; as I remember it, he was traveling about, sometimes voyaging in his yacht, and at others in Boston or New York. I don't know where he was living.

Q. 40. How long before this had you seen him—before the interview?

A. I can't remember. I saw him from time to time on 'change.

Q. 41. Had you seen him immediately before?

A. Possibly I might; I cannot remember.

Q. 42. Had he said anything to you about coming to see you on this subject?

A. Not that I remember of.

Q. 43. When they came out to your house, who did the talking, Mr. Harper or Mr. Lewis?

A. Mr. Harper took the initiate.

Q. 44. What was the subject of his conversation, was it the purchase of wheat or the condition of the state of the market?

A. Yes, sir; Mr. Harper spoke of the condition of the market, the favorable outlook, but at the same time the necessity of having ample money to protect the deals.

Q. 45. What did Mr. Lewis say about it?

A. I don't remember the conversation; my recollection of the matter is that he said very little, but he raised no objections.

Q. 46. Did he speak anything at all about the condition of the market and the prospect of the wheat market?

A. I don't remember. Did you ask me whether I had any

62 conversation with Mr. Lewis in regard to this matter previous to going out there?

Q. 47. Yes.

A. I did have.

Q. 48. State what conversation you had with Mr. Lewis about this matter before he came out there?

A. I stated to Mr. Lewis when I went to see him—no, I met him on 'change as I went back at nearly half past one.

Q. 49. Was this after you had met Mr. Harper at the bank?

A. Yes, sir. I told Mr. Lewis what Mr. Harper had requested me to say to him, merely to meet at the house, to talk over the matter. I told him that Mr. Harper had made the remark to some others, and I understood that he had made it to him, that this wheat was my own, referring to me, and that I wanted him to understand distinctly that whatever conversation took place there, or whatever statement Harper would make, that I had nothing to do with (it), except as a broker; he being an old friend of mine; that it was Mr. Harper's affair, and not my own. I had an idea at that time that Mr. Harper may have intimated to him something different, so I told Mr. Lewis that he might be prepared to know that if he was accommodating anybody, it was not me, but it was Mr. Harper.

Q. 50. What did Mr. Lewis say?

A. He gave me to understand that he understood it thoroughly; that he understood that that was the conversation.

Q. 51. Was that the same day they came out to your house?

A. Yes, sir.

Q. 52. Was that all that Mr. Lewis said at that time about the wheat matters?

A. All that I remember of.

Q. 53. Did you speak to him about what the object of the meeting was to be?

A. No. I told him exactly what Mr. Harper had said to me; whether Mr. Harper had said anything to him or not I don't know.

Q. 54. Did he say anything about Mr. Harper having had a conversation upon the subject?

A. No. He made no remark; he did say that he was not very well, not able to go out, especially did not want to go out in the night air, but that he would be there.

Q. 55. What was the agreement or understanding between Mr. Lewis who was to pay these notes, as to you and him?

63 A. There was no agreement or understanding. My impression at the time of the conversation was that these notes were made that Mr. Harper was to take care of them; he was able to take care of them.

Q. 56. Mr. Harper's name didn't appear on the paper at all?

A. No, sir.

Q. 57. Who prepared the notes?

A. I am unable to say exactly, but my impression is that I did.

Q. 58. The notes are in your handwriting, are they?

A. My impression is that they are; I am not sure as to that.

Q. 59. Were they endorsed by Mr. Lewis at that time?

A. Yes, sir.

Q. 60. Was there anything said about your paying these notes at that time?

A. No, sir; there was not.

Q. 61. Was there anything said about you not paying them, that you were not to pay the notes?

A. No, sir.

Q. 62. Now state exactly what Mr. Harper did say in your presence about the notes?

A. Well, I can't recollect what he did say, or even the substance of the conversation that took place; they were not there but a very short time. The conversation before the paper was made was of a very short duration, and they were not there an hour at the house, and, as I remember it, the substance of the conversation was to this effect, that while this wheat deal was very successful, and the prospects were of a successful termination, yet with the opposition that existed there in Chicago, it was best to be prepared to furnish additional margin, ready when called for, and while the money was not needed then, possibly it might be later on, and that Mr. Harper wanted to be prepared for it; but he wanted to have it, so that he could use it in case he was called upon for additional money. The notes were delivered to him, he put them in his pocket and left the house; and this is the last I ever saw of them.

Q. 63. Were the notes endorsed by Lewis before they were delivered to Harper?

A. Yes, sir.

Q. 64. What other notes were given and signed by you and Mr. Lewis at that time—at that date is what I speak of now?

A. No other notes.

Q. 65. Were there other notes signed by you and Lewis?

64 Objected to by Wm. Worthington, attorney for plaintiff.

A. On February 14 and February 17, 1887.

Q. 66. What notes were given then?

A. Ninety days—John V. Lewis to J. W. Wilshire, $25,000; four months note to J. V. Lewis, $25,000, that was on February 14. On February 17, five months to John V. Lewis for $25,000, and a six-months' note for $25,000.

Q. 67. Were not these notes all signed at the same time?

A. No, sir; I don't think they were—which notes?

Q. 68. Were not these four notes signed at the same time?

A. I don't remember as to that, sir.

Q. 69. Do you remember when these notes were signed?

A. No, sir; I don't.

Q. 70. Were these notes given to Mr. Harper, too?

A. I don't remember that. I do remember, of course, that these notes were not a part of the transaction on the evening of February 25th.

Q. 71. For what purpose were those four notes given?

Objected to by Wm. Worthington, counsel for plaintiff.

A. Given for the same purpose that the others were, as I understand it, on February 25th.

Q. 72. Do you remember at all the circumstances under which these notes were given?

A. I don't.

Q. 73. Did you receive the proceeds of these four notes—your firm?

A. I can't say exactly now, but my impression is that one or two of them was discounted.

Q. 74. By whom?

A. Discounted and placed to the credit of Wilshire, Eckert & Co., discounted in the Fidelity national bank.

Q. 75. And placed to your credit?

A. Yes, sir.

Q. 76. Do they appear on your books at all, these notes?

A. If they were discounted by us, they do.

Q. 77. Well, can you refer to the books of Wilshire, Eckert & Co., and see whether these four last-mentioned notes appear on your books or not?

A. Yes, sir—you mean those four last notes of February 14th and 17th?

Q. 78. Yes, sir.

A. I will find that out.

65 Q. 79. Will you find out the dates at which they were entered on your books?

A. Yes, sir; I will.

Q. 80. Now, for whose accommodation did you endorse those four notes?

Objected to by Wm. Worthington, counsel for plaintiff.

A. For Mr. Harper's.

Q. 81. Do you know the reason Mr. Lewis executed those four notes as maker?

A. I don't; it is beyond me.

Q. 82. Was there no business relation existing between Mr. Harper and Mr. Lewis except such as grew out of the wheat speculation?

Objected to by counsel for plaintiff.

A. Nothing that I know of whatever. Mr. Harper was exceedingly uncommunicative to me in regard to any matter except what related to business transactions between himself and myself.

Q. 83. When did you first hear the note due June 28—of its not being paid?

A. I have no recollection of being notified of it at all.

No question or answer numbered 84 appears in the transcript.

Q. 85. Did you pay any attention at all to the payment of those four notes of which you were the maker?

A. None whatever.

Q. 86. Have you ever had any conversation since in regard to them?

Objected to by counsel for plaintiff.

A. Yes, frequently.
Q. 87. When?
A. Long—shortly after the failure of the Fidelity national bank. Mr. Lewis asked me——

Objected to by counsel for plaintiff.

Q. 88. Have you since that time?
A. Yes, sir.
Q. 89. When?
A. Well, I met him in New York, on two occasions. I met him in Philadelphia, my impressions is, let's see; I met him in Philadelphia, not by appointment, but while attending meeting of the Loyal Legion, about a year ago.
Q. 90. Is that the last time you saw him?
A. No, sir; I saw in New York last fall.
Q. 91. Was that after he had been sued upon this $25,000?
A. Yes, sir.
Q. 92. Where did you see him then?
66 A. He came to call on me in the St. James hotel.
Q. 93. What did he say about having been sued at that time upon the notes?

Objected to by counsel for plaintiff.

A. He asked me to go with him to the office of Mr. Edgar Johnson.
Q. 94. Did you go?
A. Yes, sir.
Q. 95. Was Edgar Johnson, Mr. Lewis' attorney at that time, attending to the case?
A. Yes, sir.
Q. 96. When you met Mr. Lewis in New Bedford, what was said about wheat speculation at that time?

Objected to by counsel for plaintiff.

A. I don't remember of anything having been said.
Q. 97. Did he say how much he had lost in wheat speculation?
A. I don't remember, Mr. Herron, that he did; I was considerably disturbed about that time, and my memory is not very reliable. I was there but a few hours.
Q. 98. Did he say anything about his connection with Mr. Harper in reference to wheat speculation?
A. Not that I remember of.
Q. 99. You testified in the suit against the directors, did you not; also in court, did you not?
A. Yes, sir.
Q. 100. Now, did you not testify on that occasion in the case where Mr. Harper was on trial, that Mr. Lewis was interested in the $300,000 purchase of wheat with Mr. Harper, 300,000 or 3,000,000 bushels of wheat; I don't remember what it was?
A. No, sir; my recollection of that is now that I testified about

Mr. Lewis having brought me an order from Mr. Harper to buy a million bushels of wheat; that is the only connection that I know of.

Q. 101. Well, is that so?

A. He brought me a written order from Mr. Harper.

Q. 102. When was that?

A. I don't remember the date. The circumstances of it were this: I received a telegram on 'change from one of our correspondents in Chicago, saying that if a purchase of wheat of sufficient amount were made at that time that the market would advance very considerably. Mr. Lewis was on 'change at the time, and I was in the habit of showing him and my other friends telegrams I received, and the telegram I received from Chicago was among the telegrams that I had. I showed him this one. I said I did not want
67 to go over to see Mr. Harper now; I am busy; and besides, I did not know much about this wheat. He said: "I might go over there;" and he said: "I will show him that telegram." I said, "All right, you can show it to him." Shortly after he returned with a written order signed "E. L. H.," and giving me directions how to buy it. In fact, as I remember the order, it was in the wording of a telegram I should send. Now, that is the only recollection that I have now.

Q. 103. Can you give the date of that?

A. No, sir; I can't give the date; it was in the latter part of June or first of July, 1887.

Q. 104. It could not have been that late, could it?

A. I don't know.

Q. 105. Harper failed in June. Would your books show when that million of bushels of wheat was ordered?

A. We were buying so much at that time, I don't know that it would show that particular number of bushels.

Q. 106. Have you got that order?

A. No, sir; I think it is in the hands of Mr. Lewis; I don't think he ever gave it to me.

Q. 107. Mr. Lewis kept the order, did he?

A. That is my impression; he kept it. Now I know he did, because I saw it afterwards.

Q. 108. You saw it afterwards in Mr. Lewis' possession?

A. Yes, sir.

Q. 109. Now, according to your recollection, is that all you testified to on the trial of Mr. Harper in regard to Lewis' connection with the wheat speculation?

A. That is all I remember; yes, sir.

Q. 110. How long have you read it since that time?

A. I don't know that I read it since that time at all; I know I have not.

Redirect Examination of J. W. Wilshire.

By WM. WORTHINGTON, attorney for plaintiff:

Q. 111. Mr. Wilshire, you said you did not recollect having been notified of the non-payment of the note that became due June 28th;

don't you recollect receiving a telegram of the Chemical national bank on that day, or a telegram dated that day, that the note was with them and had not been paid?

A. No, sir; I do not.

Q. 112. You were asked whether you knew of any business relations between Harper and Lewis except as to the wheat deals; do you know of any relation between them in any way with reference to wheat or grain deals at the time in February when these notes were given, other than what you have already testified to here?

68 A. I know nothing at all, sir.

Q. 113. This order that Mr. Lewis gave you from Harper, to buy a million bushels of wheat, do you recollect whether that was given before or after these notes of February 25th?

A. (Answer omitted from transcript).

Q. 114. Would an examination of your books help you to fix that, do you think?

A. I could not fix the identical transaction, I don't believe, because we got several orders to buy large amounts of wheat at that time. I remember his peculiar way of buying was to order us to buy a million bushels of wheat, for instance, and he would buy a part of it at a certain price, and a part at more; or, on the other hand, to buy it at a certain price and buy it down.

Q. 115. Do you recollect whether this order was placed to the broker from whom you received the telegram?

A. I think it was; I am almost sure of that.

Q. 116. Had you had deals with that broker prior to that time with that magnitude?

A. Yes, sir; we had. I think I can fix that particular transaction; it was written on a paper as I should word a telegram.

Q. 117. In the conversations that you have had with Mr. Lewis since this transaction—since the giving of these notes in February—has he said anything to you with reference to his being jointly interested with Mr. Harper?

A. No, sir.

Q. 118. In any of these wheat deals?

A. No, sir.

Q. 119. Did he ever say anything to you as to why he had endorsed these notes of February 25, 1887?

A. No, sir. On the other hand, he never has given me any satisfactory explanation in reply to my inquiries. I mean by that, that while he has never avoided my inquiries, I made the remark on several occasions that I never could understand why he should endorse, or make that paper, knowing him as the business man that I did. I was afraid (Mr. Lewis was a warm friend before this transaction) that Harper was using him in that way, and it was for that reason I had a talk with him previous to going out.

Q. 120. When you put that question to him, what did he say?

A. Well, he did not give any particular answer to it at all; and I expressed myself and never have been able to understand since that time—as I told him—why it was that he made this paper.

69 By Mr. HERRON:

Q. 121. And he gave you no explanation?

A. No, sir. Whatever there may have been between Mr. Harper and Mr. Lewis, I know nothing of it whatever, as there was a great many other notes on this matter of wheat; it was all new to me.

Q. 122. So far as your know, was Mr. Harper in any way interested in the wheat deals you were conducting at that time for Mr. Lewis?

A. Not that I know of; never had any reason to think so.

(There is no queston No. 123, or answer in the transcript.)

Q. 124. How large were these deals for Lewis, do you recollect, in February?

A. They were very small, and in St. Louis the larger amount of them, that is, the principal amount.

Q. 125. When you say, " very small," how much do you mean?

A. Two or three hundred thousand, perhaps, not over.

Q. 126. Two or three hundred thousand of what?

A. Bushels of grain.

Q. 127 And the margins on that would be about how much, in dollars?

A. Well, it would depend a gread deal on how long it had been running, how the market was at that time. Mr. Eckert could give you that.

By Mr. HERRON:

Q. 128. Mr. Harper and Mr. Lewis were speculating in wheat at the same iime?

A. You mean they were speculating at the same time?

By Mr. WORTHINGTON:

Q. 120 Whether they were jointly or not?

A. I don't know.

Q. 130. They were speculating on a difference in the market?

A. Yes, sir; exactly.

Q 131 Were they speculating in the same market as to place?

A. As I remember it, Mr. Lewis had some wheat, but all his deals were at the market by his cash payments into it. There was no connection in the margin of his deals and the margin of Mr. Harper's deals at all.

Q. 132. The question, whether the speculation was in the same market?

A. Mr. Harper had nothing that I now of in St. Louis at all.

70 Q. 133. Mr. Lewis had some in Chicago, did he not?

A. Yes, sir; I think he had a small amount in Chicago. If he did not have at that particular time, he had previous to that time for six or seven years given us orders.

Q. 134. I was speaking about what deals he had in February 25th?

A. Well, I could not say exactly, but my impression is that they were deals in Chicago.

Q. 135. At that time?

A. At that time; yes, sir.

Q. 136. And as to the amount?

A. I could not say.

Q. 137. Would your books show all the purchases you made for Lewis?

A. I think they would; yes, sir.

Q. 138. Well suppose you look at them.

Adjourned by *counsel* till May 6th.

On the sixth day of May, John W. Herron, Esq., Wm. Worthington, Esq., and Joseph Wilshire, Esq., being present, the taking of this deposition was resumed.

Q. 139. Since you were last upon the stand, have you examined the books of Wilshire, Eckert & Co., with reference to the things as to which you said they might refresh your memory; if so, state with what result?

A. I have examined the books and find that during the month of February and until March 26. 1887, John V. Lewis had not bought or sold any articles of merchandise through that firm; between March 26th and April 5th, Mr. Lewis bought at St. Louis 300,000 bushels of wheat for May delivery, and bought at Chicago 100,000 *bushels* (copy) of short ribs for May delivery.

I find also that the written order from Harper, which I have testified was given to me by Mr. Lewis on 'change to buy 1,000,000 bushels of wheat in Chicago, was given on the eighth day of March, 1887.

I find also that of the notes which I have testified as having been made upon the seventeenth day of February, 1887, $50,000 were discounted in the Fidelity national bank, and proceeds placed to the credit of Wilshire, Eckert & Co.

JOSEPH W. WILSHIRE.

THE STATE OF OHIO, } ss:
Hamilton County, }

I, Albert W. Schwartz, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named Joseph W. Wilshire, was by me first sworn to testify the truth, the whole truth, and nothing but
71 the truth, and that the deposition by him subscribed as above set forth, was by agreement taken down in shorthand and transcribed by myself, and was subscribed by said witness in my presence, and was continued from day to day, as above set forth; that said deposition was taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this thirteenth day of May, A. D. 1892.

[SEAL.] ALBERT W. SCHWARTZ,
N. P., Hamilton County, Ohio.

(Directions for taking deposition omitted.)

Cost of Bill.

	Witness fees.
Writing and certifying depositions, at 20 cts. per 100 words (4,300 words)....$9 00	(At 75 cts. per day and 5 cents traveling fees, each way, if not less than one mile.).....
Total cost of taking deposition.....	$9 00

Received of William Worthington the sum of $9 in full of my fees, as above specified.

ALBERT W. SCHWARTZ,
N. P., Hamilton County, Ohio.

And afterwards, to wit, on the seventh day of October, A. D. 1891, the following deposition was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

(Instructions for taking depositions omitted.)

Depositions of sundry witnesses, taken before me, Wm. C. Herron, a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the agreement of the parties herein and at the time and place therein specified, to be read in evidence in behalf of the respondent in an action pending in circuit court of the United States, southern district of Ohio, in which the Chemical National Bank of New York is complainant and David Armstrong, receiver, etc., is respondent, William Worthington being present on behalf of respondent.

72 *Deposition of J. Harry Watters.*

United States Circuit Court, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank.

Deposition taken on behalf of defendant, at the office of John W. Herron, Friday afternoon, three o'clock, September 25, 1891.

Present: For complainant, Judge William Worthington; for respondent, John W. Herron.

J. HARRY WATTERS, called on behalf of respondent, being first duly sworn, testifies as follows:

Direct examination by Mr. HERRON:

Q. 1. State your name, residence and occupation.
A. My name is J. Harry Watters; residence, No. 55 West Ninth

street, Cincinnati, Ohio; I am principal of Watters' Business College; I was formally book-keeper for the receiver of the Fidelity national bank.

Q. 2. State what connection, if any, you had with the Fidelity national bank, and for what length of time, if at all.

A. I was connected with the Fidelity national bank from March 1, 18—, the first day that bank opened, until the day of the failure, June 25, 1887. I was employed as general book-keeper and general utility clerk.

Q. 8. State whether you had access to the books from which the certificates of deposit were taken when issued by the Fidelity national bank.

A. I had; yes, sir.

Q. 9. State whether any certificate of deposit for three hundred thousand dollars, in favor of Edward L. Harper, dated February 28, 1887, appeared on the stubs of the certificate of deposit book.

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. There appears on the stub of the certificate of deposit book No. 197 a record $300,000 issued to E. L. Harper, deposited by himself, without date. This is written between a certificate No. 496 and a certificate No. 498 of dates May 17 and May 21.

Q. 10. Look at the book now shown you, and state what it is, if you know.

73 A. This is the certificate of deposit book from No. 1 to 500.

Book offered in evidence marked "Watters' Exhibit No. 1."

Q. 11. State what use was made of that book in the Fidelity national bank, and for how long a time?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. From March 1 to May 17, this book, with the certificates of deposits and stubs, were used to enter a record of all certificates of deposits issued by the Fidelity national bank.

Q. 12. Was any other book used by the Fidelity national bank for that purpose?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. None during this time. Afterwards another certificate of deposit book, numbering from 500 upwards, was used by the bank.

Q. 13. After what date?

A. After May 17th.

Q. 14. In whose handwriting is the entry of the stub?

A. It is in the handwriting of Miss Josephine Holmes.

Q. 15. What knowledge have you as to when that entry (on) the stub was made?

A. I do not know the exact date of the entry—the exact date that the entry was made; but about a quarter to eleven o'clock on the morning of June 20th, 1887, Mr. Eugene Powell, then national bank examiner for the State of Ohio, came to me while I was sitting at the paying teller's desk, and asked me what the record meant.

Q. 17. He showed you that record, did he?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. Yes, sir.

Q. 17. Had you ever seen that record prior to that time?

A. No, sir.

Q. 19. Had you any knowledge of it at all?

A. No, sir.

Q. 20. What disposition was made of the three hundred thousand dollars credited to the Fidelity national bank by the Chemical national bank, on March 2, 1887?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. I will give you, as near as I can remember, the exact transactions as they occurred on the day of March 2, 1887. Mr. Edward L. Harper, the vice-president of the Fidelity national bank, came to my desk—the general book-keeper's desk—and gave me a
74 charge ticket, asking me to please place it to his credit. I think I made out the charge ticket which was given to the receiving teller, who, in turn, entered it on the deposit book of the Fidelity, and by the individual book-keeper placed to the credit of Edward L. Harper. The charge ticket went to the general book-keeper, who, in turn, charged a like amount to the Chemical national bank.

Q. 21. Look at the paper now shown you, and state what it is.

A. This is the original deposit ticket made out by myself at the request of Mr. Edward L. Harper.

Paper offered in evidence marked "Watters' Exhibit No. 2."

Q. 22. Look at the paper attached to your deposition taken in the case between these same parties, in New York city, and state what that is.

A. This is a copy of the charge ticket which was handed to me by Mr. E. L. Harper, from which I made the original deposit ticket.

Paper offered in evidence marked "Watters' Exhibit No. 3."

Q. 23. At the time you gave your testimony in that case, had you the original of the paper before you?

A. Yes, sir; I think I had; in fact, I know I had it before me, yes, sir.

Q. 24. This is a copy of the original?

A. Yes, sir; that is an exact copy, except that there is no date on it, and I think the original charge ticket had a date on it.

Q. 25. Were any other entries made on the books of the Fidelity national bank in reference to this three hundred thousand dollar loan, except those you have described?

A. No, sir; there were none.

Q. 26. What, then, was the effect as to the disposition of this money of the entries so made?

Question objected to by counsel for complainant. Exceptions reserved by counsel for respondent.

A. Mr. Edward L. Harper received credit for three hundred thousand dollars, and the Chemical national bank was charged with this amount.

Q. 27. What paper or obligations, if anything, was given by Mr. Harper to the Fidelity national bank at that time?

Question objected to by counsel for complainant.

A. There is none that I know of.

Q. 28. Who, besides E. L. Harper, have any directions in regard to these entries?

75 Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. Nobody.

Q. 29. What knowledge, so far as you know, had any other officers of the bank of the entries to (which) you have referred?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. I can't say whether the officers were aware of the fact or not.

Q. 30. Do you know whether they did know of it or not?

A. No, sir; I do not know.

Q. 31. Had you any access to the letter books, or have you had access to the letter books of the Fidelity national bank?

A. I have, yes, sir.

Q 32. I will ask you whether you have examined those letter books, to see whether a letter from E. L. Harper to the Chemical national bank under date of February 28, 1887, enclosing a certificate of deposit for three hundred thousand dollars—certificate of deposit No. 345, was copied in any such letter book?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. I did, prior to the time of giving my testimony in the case of David Armstrong, receiver of the Fidelity national bank, *vs.* The Chemical National Bank; and I did not find any record of it.

Q. 32½. Have you examined since, to see if it was there?

A. No, sir; but at the time I made the examination, I was employed in the Fidelity national bank, with the receiver, and had access

to all the books and papers, and my entire time was spent in going through them, and that letter was not copied in any of the letter books.

Q. 33. That letter was not copied in any of the books of the Fidelity bank?

A. No, sir; not in any of them.

Q. 34. State whether you have examined the list of paper which was enclosed in the letter of February 28, 1887, as to whether some of it was the property of the Fidelity national bank, and, if so, with what result?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. The paper that was sent with the letter of February 28, 1887, part of it belonged to the Fidelity national bank, and part of it did not.

Copy offered of list, marked "Watters' Exhibit No. 4."

Q. 35. What part of it belonged to the Fidelity national bank, and what part did not?

76 A. Do you want the items?

Q. 36. Yes, sir.

A. The Jung Brewing Co., due June, 1887, $25,000; same, due April 24, 1887, $10,000; C. Aultman & Co., five pieces, $10,000 each, due May 16th, 20th, 23rd, 27th, and 30th; Champion Machine Company, twelve pieces, belonged to the Fidelity; the others did not.

Q. 37. State what entry was made on the books of the Fidelity national bank as to the disposition of this paper when it was sent to New York?

A. There were no entries made on the books of the Fidelity at that time.

Q. 38. What is the custom, if you know, among banks as to entries upon sending paper to another bank, under circumstances similar to these?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. On the "remarks" column, in the books in which such paper would be recorded, a record would be made saying, "paper sent such and such a date, as collateral for loan of such and such an amount."

Q. 39. And you say that no such entry was made in that case?

A. No, sir.

Q. 40. Look at the list of paper, now shown you, sent to the Chemical national bank, on May 27, 1887, and state to whom that paper belonged if you know?

Copy offered, marked "Watters' Exhibit, No. 5."

A. On May 21, 1887, the paper that was sent by the Fidelity national bank to the Chemical national bank; none of it belonged to the Fidelity national bank.

Q. 41. State whether the interest which purported to have been paid on the loan was paid, and how and what entry was made on the books of the bank?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. A draft was drawn on the Chemical national bank for $4,133.33 of which there was no record on the books of the Fidelity national bank.

Q. 42. Look at the letter now shown you, dated July 3, 1887, and state what it is?

A. This is a letter from the Chemical National Bank of New York City to David Armstrong, receiver of the Fidelity national bank, in which it states that Mr. J. V. Lewis has paid the note to J. W. Wilshire.

Letter offered in evidence, marked "Walters' Exhibit No. 6."

Q. 43. Was that letter received by Mr. Armstrong?

A. Yes, sir.

77 Q. 44. In the regular course of mail?

A. Yes, sir; I think I remember it.

Q. 45. Look at the paper now shown you, and state what it is?

A. A letter of advice from the Chemical national bank, dated August 24th, received by David Armstrong, receiver of the Fidelity national bank.

Letter offered in evidence, marked "Watters' Exhibit No. 7."

Q. 46. Look at the paper now shown you, and state what it is?

A. It is the account current from the Chemical national bank to the Fidelity national bank, commencing August 5, 1887.

Paper offered in evidence, marked "Watters' Exhibit No. 8."

Q. 47. Look at the paper now shown you and state what it is?

A. This is a copy of the account current of the Chemical national bank, from July 6, 1887.

Paper offered in evidence, marked "Watters' Exhibit No. 9."

It is agreed between counsel that the third letter of advice may be offered as soon as found.

Q. 48. State whether you received—or the Fidelity received—an account current April 1, 1887, in which this $300,000 appeared to the credit of the Fidelity national bank, and, if so, what conversation, if any, you had with Mr. Harper in regard to it?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. I didn't have any conversation with Mr. Harper in regard to it. The account current was received by the Fidelity national bank, and turned over to me about the fourth or fifth of April. It was checked up with the books of the Fidelity national bank, and found to be O K.

Paper offered in evidence, marked "Watters' Exhibit No. 10."

Q. 49. What did you do with it then?
A. Filed it away among the paper(s) of the Fidelity national bank.

Cross-examination of J. Harry Watters.

By Judge WORTHINGTON:

Q. 50. Was Miss Josephine Holmes in the employ of the Fidelity national bank?
A. She was.
Q. 51. During what period?
A. From about the middle of April, 1886. I can tell you the exact date if you wish it.
78 Q. 52. No; that is not necessary.
A. Well, from about the middle of April, 1886, until after the failure of the bank in June, 1887.
Q. 53. What position did she hold?
A. That of exchange clerk.
Q. 54. Look at the stub of this certificate of deposit, No. 345, in the certificate of deposit book, and state what writing is upon that, and in whose handwriting?
A. The word, "canceled," is in the handwriting of Miss Josephine Holmes.
Q. 55. Can you produce the book of the Fidelity national bank containing the entries relating to the Jung Brewing Company papers in April and June, 1886?
A. (Answer omitted from transcript.)

(No answer.)

Q. 56. You spoke in your examination-in-chief of there being some book in banks in which a record was kept when paper was sent out to other banks, to indicate that the paper had been sent as collateral; what book is that?
A. The foreign bill tickler.
Q. 57. Have you examined the foreign bill tickler of the Fidelity national bank to see whether there is any memorandum at all of the Jung Brewing Company paper notes that were due in April and June?
A. Yes, sir.
Q. 58. Did you find the notes there?
A. No, sir; I found no record of the notes there. There is no record of the notes on this book.
Q. 59. Did I understand you to say that the note should appear on that book, whether it had been sent out as collateral or not?
A. Yes, sir.
Q. 60. If it had been sent out as collateral, that would appear in the memoranda, in the remark margin?
A. Yes, sir.
Q. 61. Just explain what this foreign bill tickler book is?

A. The foreign bill tickler is a record kept putting the notes that are due by the month together; and under the date of April and June there does not appear any record of this note of the Jung Brewing Company. It appears as being discounted, in the discount book of the Fidelity national bank.

Q. 62. The book, then, is a record kept by the bank of maturities which it holds?

A. Yes, sir.

Q. 63. When they sent out notes as collateral, which they owned, usually in the Fidelity national bank they made a memorandum on this tickler against that particular note; is that it?

79 A. No, sir. The question asked me by Mr. Herron was what was the custom, which I explained was that they made a marginal note of what became of the paper, but no such record was ever kept on the books of the Fidelity national bank.

Q. 64. They never did that at all?

A. No, sir.

Q. 65. So that when you spoke of that as being a custom in banks, you did not mean that that was the custom of the Fidelity national bank?

A. No, sir.

Q. 66. And they never did make any such memorandum in the Fidelity national bank?

A. No, sir.

Q. 67. Look at the foreign bill tickler, and see if you can find in it the notes of C. Aultman & Co., due in May, 1887, five pieces for $10,000 each?

A. Yes, sir; this appears under date of May, in the foreign bill tickler.

Q. 68. See if you find upon that tickler the twelve pieces of the Champion Machine Company, mentioned in the letter of the twenty-eighth of February, 1887, eight due in June, two in July and two in August, 1887?

A. I find that they are all there; yes, sir.

Q. 69. Mr. Watters, you stated something about a draft drawn on the Chemical national bank for $4,133.33; have you access to that draft?

A. I was mistaken in regard to what I said about that draft and I should like to correct it.

(Mr. Watters makes a statement later on in regard to same.)

Q. 70. The entry in this account current, which you have produced, sent by the Chemical national bank to the Fidelity national bank, for the month of March, 1887, relating to the $300,000 of which we have been speaking, reads, on the credit side, under date of March 2, "Tem. loan, $300,000," does it not?

A. It does; yes, sir.

Q. 71. This account, which has been marked "Watters' Ex. No. 8," being the Fidelity national bank in account with the Chemical national bank, the first credit entry being "July 6, 1887, $3,000.00,"

and the first debit entry being "August 5th, 1887, $6.90;" what does that purport to be on its face?

A. A list of notes pledged to the Chemical national bank, which were held by the Chemical as collateral for $300,000 loaned by the Chemical to the Fidelity; a list of fees charged for protest; transfer to——

Q. 72. Well, I don't care for all that; I just want to know what it purports to be on its face?

80 A. A list of notes pledged to the Chemical national bank, and held by it as collateral.

Q. 73. The credit entries, then, are collections made by the Chemical national bank of notes which had been pledged to it as collateral by the Fidelity national bank?

A. Yes, sir.

Q. 74. You speak of $300,000.00, that account includes, also, the figures of the June loan, does it?

A. Yes, I was about to say that when interrupted.

Q. 75. And they all appear in one account, without any separation of the collections to the credit of the particular loan for which the collateral was sent?

A. Yes, sir; all together.

Q. 76. The other account handed you by Mr. Herron, pinned to "Exhibit No. 9" headed "Dr. Fidelity national bank account with Chemical national bank" the first debit entry of which I cannot see, but the first credit entry is "July 6th, Evan Thomas, $285.00;" what does that purport to be?

A. A list of paper collected for different loans to the Fidelity national bank, charged with the balance due collateral account on the different loans made by the Chemical national bank to the Fidelity national bank.

Q. 77. The credit entries, then, upon this last exhibit, are collections by the Chemical national bank, of notes pledged to it as collateral?

A. Yes, sir; for different loans.

Mr. HERRON:

Q. 78. Well, is that all?

A. Yes, sir; that is what they are.

Judge WORTHINGTON:

Q. 79. The apparent difference upon the credit side of these two accounts of which we have been speaking just now, and in examining them in detail, is that in "Exhibit No. 8," the names are not given and in "Exhibit No. 9" they are.

A. That is it; yes, sir.

Q. 80. You stated, Mr. Watters, that you have looked through the letter book of the Fidelity national bank, to see if you could find a copy of the letter of February 28, 1887, from E. L. Harper to Mr. Quinlan, cashier, of the Chemical national bank?

A. Yes, sir; I did look.

Q. 81. And you could not find it?

A. I could not find it.

Q. 82. Did you look to see if you could find a copy of a letter from Mr. Harper to Mr. Quinlan, of May 21, 1887, enclosing the second lot of collateral, and asking the return of a portion of the first lot?

A. I have looked, and have just now looked again, in
81 the letter books that such copy should be made in, but no record of it appears.

Q. 83. Will you please produce the ledger account of the Chemical national bank with the Fidelity for March, 1887?

A. Yes, sir; here it is.

Q. 84. Just read the ledger entry as it appears.

A. March 2, 1887, debit $349,107.49; in the balance column, debit $332,716.35.

Q. 85. That means including the $300,000.00?

A. The charge; yes, sir.

Q. 86. Against the Chemical?

A. Yes, sir.

The WITNESS: I desire now to make a correction of my former statement in answer to a question asked me by Mr. Herron, as to when the interest had been paid on this loan. I was mistaken in saying that a draft had been sent to the Chemical national bank for $4,133.33. This amount of money had been sent to the Western National Bank of New York City, by a draft drawn on the Chemical national bank.

Judge WORTHINGTON:

Q. 87. This draft had no relation whatsoever, then, with the dealings between the Fidelity national bank and the Chemical national bank?

A. None whatever, no, sir.

Redirect examination of J. HARRY WATTERS.

By Mr. HERRON:

Q. 88. In the foreign bills tickler, about which you have spoken—testified—and in which you (said) *was* the notes of C. Aultman & Co., and of the Champion Machine Co. appear, what memorandum is made on that tickler as to the disposition of those notes, prior to the failure of the Fidelity national bank?

A. None, except that the record had been made that the paper was due and the place in which it fell due.

Q. 89. You stated, Mr. Watters, that "Exhibit No. 8," was the same as No. 9, except in one particular, now, as I understand——

A. No, sir; I said the credit side only.

Q. 90. Have you examined it to see?

A. Yes, sir.

Q. 91. Now I will ask you, does not "Exhibit No. 8" purport to be a general account current between the Fidelity national bank and the

Chemical national bank, as to all transactions between them during the time covered by the account?

82 Question objected to by counsel for complainant as misleading to the court, because the Fidelity national bank was not in existence, this report being to the receiver of the Fidelity. Exception reserved by the counsel for respondent.

A. On the face of it, it looks that way; but whether it is an actual list of all transactions that occurred, I would have to make a more thorough examination to see.

Q. 92. The question, Mr. Watters, was whether it did not purport to be a general account current between the Fidelity national bank and the Chemical national bank, as to all transactions between them during the time covered by the account?

A. Yes, sir; it does. This is not the original.

By Judge WORTHINGTON:

Q. 93. This Exhibit No. 9 covers what period of time, Mr. Watters?

A. From July 6, 1887, to November 17, 1887.

Q. 94. You just said, Mr. Watters, that this is not the original; do you mean that this is not the one sent to Mr. Armstrong, receiver, by the Chemical national bank?

A. That is the one sent to the Fidelity by the Chemical but it is not the first one.

Q. 95. Do you know when this was sent?

A. No, sir; I do not.

Q. 96. Mr. Watters, when you say it purports to show dealings between the two banks, then, you do not mean to imply that the Fidelity national bank was in existence at that date, or had existence at that date?

A. No, sir; on the face of it they were dealing with the Fidelity national bank, though.

By Mr. HERRON:

Q. 97. Mr. Watters, look at "Exhibits 8 and 9," and state whether there are not entries upon No. 8 which are not upon No. 9, on both sides of the account?

A. Yes, sir; there are.

Q. 98. In No. 9 there is a balance brought from a previous account, in the beginning of it there; is there any such item in No. 8?

A. No, sir.

Q. 99. State, at the time the paper was sent away as collateral by the Fidelity national bank, in June, to the Chemical national bank, what record was kept or made of that paper on the books of the Fidelity national bank.

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. None.

Q. 100. What record was kept of it?

A. None.

83 Q. 101. Was there any other cases of paper sent away by the Fidelity national bank except the three cases to the Chemical national bank?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. There were.

Q. 102. What other cases?

A. The First National Bank of New York City, $113,000 of paper.

Q. 103. What record was kept of that?

A. None.

Q. 104. Was a copy kept in the letter book of the letter in which it was sent?

A. No, sir.

Q. 105. Any others?

A. None that I know of.

Q. 106. After the $300,000 was credited to E. L. Harper's account, as you have testified, state whether it was then drawn out by him?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. E. L. Harper had a running account on the books of the Fidelity national bank; there was enough drawn out of his account by his checks to not only exhaust the $300,000, but several hundred thousand dollars besides.

Q. 107. State whether or not these checks were for his individual benefit?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. That I cannot say. They were signed individually by him.

Q. 108. Well, were they used for the benefit of the Fidelity national bank?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. No, sir; they were not.

By Judge WORTHINGTON:

Q. 109. Mr. Watters, when I was cross-examining you, I asked you if you could produce the book of the Fidelity national bank containing the entries relating to the Jung Brewing Company paper, whereupon you went after the book without answering the question. When you brought the book in, you called it the foreign bill tickler, and said that you could not find reference in it to the Jung Brewing Company paper? Have you now any explanation to make in reference to the Jung Brewing Company paper?

A. The Jung Brewing Company paper happened to be
84 paper due in the city of Cincinnati, and as domestic bills, a record of the day of such paper became due, is made on the domestic bills tickler, instead of the foreign bills tickler, which is the book I was looking in first.

Q. 110. Will you now get the domestic bills tickler, for the maturities of April and June, 1887, and see what entries there are in it relating to the Jung Brewing Company paper?

A. Yes, sir; I have both the books before me.

Q. 111. Will you find in the book for April, the note of the Jung Brewing Company coming due April 24, 1887, for $10,000.00?

A. Yes, sir; I have.

Q. 112. Does that book show whether or not it was paid to the Fidelity national bank at its maturity?

A. Yes, sir.

Q. 113. The maturity being what day?

A. April 24th, 1887; but the 24th being Sunday, it was paid on the Saturday previous, the twenty-third of April.

Q. 114. Now, Mr. Watters, as to the note due June 24th, 1887, for $25,000.00?

A. It is entered on the domestic bills tickler, and on June 24th a part payment was made of $21,808.86.

By Mr. HERRON:

Q. 115. State how, and under what circumstances the Jung Brewing Company paper came again in the possession of the Fidelity national bank?

A. I am not able to answer about the $10,000 note.

Q. 116. Well, can you answer as to the $25,000 note?

A. On May 21st, 1887, Mr. Edward L. Harper sent additional collateral to the Chemical national bank, requesting the return of certain paper that he had previously sent them; among this paper was the one piece of the Jung Brewing Company due June 24th, 1887, for $25,000.00.

Q. 117. Did the Chemical return the paper in answer to that request?

A. Yes, sir; they did.

At this point the taking of further testimony was adjourned to Saturday afternoon, three o'clock, September 26th, 1891.

SATURDAY AFTERNOON, THREE O'CLOCK, *September* 26, 1891.

Met pursuant to adjournment; but owing to the illness of Mr. Herron, counsel for respondent, a further adjournment was had to Monday afternoon, three o'clock, September 28, 1891.

85 *Deposition of David Armstrong.*

MONDAY AFTERNOON, THREE O'CLOCK, *September* 28, 1891.

Met pursuant to adjournment.

Same parties present.

DAVID ARMSTRONG, called on behalf of respondent, being first duly sworn, testifies as follows:

Direct examination by Mr. HERRON:

Q. 1. State your name, age, residence and occupation.

A. David Armstrong; age 55; residence, Jackson, Ohio; present occupation receiver of the Fidelity national bank, Cincinnati, Ohio.

Q. 2. State when you became receiver of the Fidelity National Bank of Cincinnati, and whether you have been such from that time on?

A. My commission is dated June 27, 1887, and I have been receiver ever since that date.

Q. 3. State whether, as such receiver, you have possession of all the assets of the Fidelity national bank (assets), books, and papers belonging to the Fidelity?

A. Yes, sir; I have.

Q. 4. State whether or not you have given the business of the Fidelity national bank your personal attention during that time?

A. Yes, sir; I have.

Q. 5. State what you know, if anything, of the payment to the Chemical national bank of three notes of J. W. Wilshire, endorsed by J. V. Lewis, for $25,000 each, which are held by the Chemical national bank as collateral for an alleged loan of $300,000?

A. I was advised by the Chemical national bank of the payment of the notes to them by letter, and also personally.

Q. 6. State whether you know of any other payment—of the payment of any other money to the Chemical national bank, on account of that alleged loan of $300,000, in addition to the three notes of $25,000 each?

A. Yes, I paid to them myself, as receiver, their proportion of collections made from certain bonds that were taken on the compromise with the Champion Machine Company, in settlement of the indebtedness on notes of the Champion Machine Company, which they held as collateral—which the Chemical held as collateral.

Q. 7. How much?

A. I haven't the amount here.

Q. 8. Just get it, please, if you can—the amount of the notes, and the amount of the bonds, and a memorandum of the cash that
86 you sent, and of the bonds you sent, and the dates?

Witness produces same.

A. On June 2d, 1890, I sent to the Chemical national bank $4,481.49 in cash, and five bonds for $1,000 each, one of $500, one of $200 and one of $100, upon which bonds payments had been made, so that the face value of the bonds sent at that time amounted to $5,800, making a total of cash and bonds sent on June 2d, 1890, $10,281.49. On the twenty-fourth of March——

Q. 9. Before leaving that, Mr. Armstrong, I will ask you to give the contents of the letter in which you enclosed that money. Just read it to the stenographer?

A.—

"JUNE 2D, 1890.

"Chemical national bank, New York city.

"GENTLEMEN: Your letter of the twenty-third ult. is received, and not sooner replied to owing to my absence from the city. As per my statement rendered you under date of February 12th, 1890, the amount of the four notes you held as collateral for the $300,000 loan was, together with the interest due thereon, at the time of taking the

Bonds		$19,484 75
50 per cent. paid in bonds Whitely, F. & K.	$9,742 37	
50 per cent. paid in bonds Champion Machine Co	9,472 38	
		19,484 75
Paid to me by Champion, 2 payments, ⅓ each, and interest		$4,481 49
Bonds Champion on hand		5,845 43
Bonds W., F. & K., on hand		9,742 37
		$20,469 29
Original amount of notes	$19,200 00	
Interest added as above	284 75	
Int. rec'd from Champ'n on bonds	584 54	
		$20,469 29

"Enclosed please find my check on First National Bank of Cincinnati for $4,481.49, which I charge your account against the $300,000 loan; and, also, please find herewith bonds of the Champion Machine — Nos. 289, 290, 291, 292, 293, for $1,000 each; No. 711 for $500; No. 933 for $200, and No. 1256 for $100, making total bonds $5,800, total cash and bonds $10,281.49, leaving a balance due you on account of Champion bonds of $—

"I also enclose herewith bonds of Whitely, Fassler & Kelly
87 to wit: Nos. 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034 and 1035 for $1,000 each; No. 153 for $500, and No. 138 for $100, making a total bonds of W., F. & K. $9,600, leaving a balance due you on account bonds W., F. & K. $142.37.

"I am unable to make up the above difference, to wit: $45.43 on Champion and $142.37 on W., F. & K., for the reason that I have no Champion bonds of less denomination than $100, and no W., F. & K. bonds of less denomination than $500. The above difference will have to be accounted for by me to you out of the proceeds of the bonds remaining in my hands when realized upon.

"Very truly, etc., D. ARMSTRONG, *Receiver.*"

Q. 10. Well, now then, what was sent afterwards?

A. On March 24, 1891.

Q. 11. How much did you send them at this time?

A. Twelve dollars and fifty cents in cash.

Q. 12. And what amount in bonds?

A. Two thousand three hundred dollars in bonds of the Amos Whitely Company, or the Champion Machine Company; it was the same.

Q. 13. You sent them in a letter?

A. Yes, sir; I sent them in a letter of which the following is a copy:

"MARCH 24TH, 1891.

"Chemical national bank, N. Y.

"GENTLEMEN: Your letter of March 7th is received and contents noted. You are correct about there being an error in the amount of Champion machine bonds sent you June 2d, 1890. I should have sent you bonds of the face value of $9,742.37, instead of $5,000. I now enclose you bonds of Amos Whitely & Co., to make up the difference, to wit:

No. 176 and No. 177, $1,000 each	$2,000	00
No. 688, $200, and No. 805, $100	300	00
	$2,300	00
Amount of cash sent you June 2d, 1890, in payment of ⅖ of principal	3,896	95
Amount of bonds now held by you	3,480	00
	$9,676	95
Balance due you still in my hands	65	42
	$9,742	37

88 "I included in the cash sent you in payment of two-fifths of the principal—as above stated was $5,884.54, interest for two years, making total cash sent you $4,481.49. This amount was also incorrect. The amount of interest due you and collected by me was $526.09, to wit, 3 per cent. interest on $9,742.37 one year $292.27, and 3 per cent. interest on $9,742.37 less one-fifth, $1,948.47—$7,793.90—interest $233.82, making amount overpaid you on account of interest $58.45. I collect 3 per cent. on $2,365.43, interest to November 1, 1890, for your account, $70.95. Balance due you on account of interest, $12.50, for which I enclose you my check on First national bank, Cincinnati.

"I send the bonds this day per express, charged paid, and hope you will find the above calculation correct; and am sorry that my want of consideration has caused you so much trouble and annoyance.

"Truly, etc., D. ARMSTRONG, *Receiver.*

"Please send me statement of cash received by you on the exchange of Champion bonds for bonds of Amos Whitely & Co."

Q. 14. What do you know of any other money being paid to the Chemical national bank?

A. It is not very much, and I cannot recollect the exact amount. I haven't it with me, but will get it for you.

Question passed for the present.

Q. 15. Look at the paper now shown you, Mr. Armstrong, marked "Watters Exhibit No. 9," and state what you know about it?

A. This is a paper purporting to be a statement of the Fidelity national bank in account with the Chemical national bank, furnished me by the Chemical national bank.

Q. 16. When was it furnished you, and in what way?

A. I haven't any memoranda here to tell the exact date of it, but it was on or about the last of November, 1887.

Q. 17. State whether any money was remitted to you by the Chemical national bank in connection with that account.

A. Yes, sir; they remitted $33,809.89 in connection with this account, as a balance due on this statement.

Q. 18. Have you the letter of the Chemical national bank enclosing the check and account?

A. I have no doubt I have the letter, but have been making search for it, and cannot find it.

89 Mr. HERRON: Judge Worthington, if we cannot find that I suppose we will want a copy of it?

Judge WORTHINGTON: Certainly, if we have it.

Witness promises to produce the letter referred to if he can find it.

Mr. HERRON:

Q. 19. State whether you had any conversation with the officers of the Chemical national bank in regard to the fourth note of J. W. Wilshire, endorsed by J. V. Lewis, which has not been credited on the account.

A. Yes; I have had conversation with Mr. Quinlan, the cashier of the Chemical national bank, and I have had correspondence from him in regard to it.

Q. 20. State what he said in regard to the non-payment of that note; why was it not paid?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. The reason he gave for not having paid it was that they had orders from Harper not to protest any of that collateral paper, and this note was overlooked at the date of it, and they had forgotten it. But he gave the other reason, also, that Harper had given orders that none of that paper was to be protested, but to return it to Cincinnati without protest—the same thing.

Cross-examination by Judge WORTHINGTON:

Q. 21. Mr. Armstrong, have you seen, among the papers of the Fidelity national bank which came into your hands, the originals of the letters which the Chemical national bank wrote to the Fidel-

ity national bank in February, 1887, relating to this $300,000 loan—letters and telegrams?

A. I could not find anything from the Chemical national bank (that is my recollection now); I could not find anything in the records of the Fidelity national bank, and I wrote the Chemical for Harper's correspondence, and they sent me copies.

Q. 22. Mr. Armstrong, do you recollect of a loan made by the Chemical national bank to the Fidelity national bank in June, 1887?

A. I recollect of the correspondence relating to the deposit of the million dollars collateral, and arrangements made upon that deposit for the Fidelity to draw—to overdraw their account, the Chemical holding this as collateral; and probably there is in that connection about $200,000 that was placed to their credit on that collateral as a loan.

90 Q. 23. This account shown you, marked "Watters Exhibit No. 9," shows on its credit side the collections of that collateral, does it not, that was sent on in June?

A. Yes, I think so.

Q. 24. And in addition to that—or, is there any of the collateral that was sent in either February or May in this statement of collections?

A. I think there is. I think this statement here is a consolidated statement showing the credits of February and May as well as of June. I think there is no distinction made in that account.

Q. 25. You think it is all in there?

A. Yes, sir; I think it is.

Q. 26. Whatever collections they had made on collateral up to that time, without regard to when it was given to them?

A. Yes, sir.

Q. 27. And on the other hand, they have charged the Fidelity national bank with the three hundred thousand ($300,000.00) dollars loan made in March, and the two hundred thousand dollar loan made in June and with the overdrafts.

A. Yes, sir.

Q. 28. And in that way it showed—by consolidating it—it showed that there was a balance due to the Fidelity national bank thirty-three hundred thousand and some odd dollars, for which they sent you a check?

—. Yes, sir.

Q. 29. Did they have any other collateral on hand at that time, which they returned to you?

A. My recollection is that they returned all the collateral except that $25,000.00 note of Wilshire's, endorsed by Lewis, that was not protested. That is my recollection; that it was all returned except that. My best impression is that they gave me orders on Mr. Jacob Burnet, an attorney here, for all the collateral which they had sent to him; also an order on different banks to which they had sent this collateral for collection; and that I had at that time—along about the last of November—all that they had in their hands. Except I have no recollection of their having sent me—or of ever

having in my hands—the $25,000.00 Wilshire note, about which there was a dispute.

Q. 30. Did you accept the settlement which they offered to make, by sending you this money and collateral?

A. I expect I had better read to you my lettter in regard to that.

Q. 31. Just answer the question, Mr. Armstrong.

A. I acknowledged the receipt of the collateral and I don't
91 now just recall the exact phraseology of it—probably I had better refer to the letter. As to whether or not I accepted the settlement offered by them is very likely a legal question, for you lawyers to decide.

Q. 32. Did you keep the money?

A. I did.

Q. 33. Did you apply the whole of the money to the June loan and overdrafts?

A. My recollection, without referring to my books, is that I did not make any application of the money at all until after the suit which I afterwards brought—after they had sent me this amount—which I afterwards brought against the Chemical national bank to account to me for the difference between the amount that they had collected on the collateral of June and the loan of June, as distinct from the loans of February and March.

Q. 34. The result of that suit was to give credit to the Fidelity national bank of the collections that were made by the Chemical national bank, from the collateral sent to them in June, and that the Chemical paid over to the Fidelity national bank the surplus of those collections—I mean, by that, to you, of course, as receiver of the Fidelity, the surplus of those collections over the amount of the loan?

A. Yes, sir; that is correct.

Q. 35. In other words, at the time that the Chemical national bank sent this account to you, the last entry of which notes the check sent you, they were claiming to apply all collections of collateral—of February and March, as well as June—to the entire indebtedness; making a consolidated account of it, so to speak; and that (they would) be responsible to you for the difference; and that is something that you would not accede to?

A. Yes, sir; that is right.

Q. 36. Have you the letters sent to you by the Chemical national bank, under date of November 17th and 18th, 1887?

A. Yes, sir.

Q. 37. Will you produce them?

A. Yes, I do.

Letters produced—offered in evidence by counsel for complainant, and marked "Armstrong Exhibit No. 1," and "Armstrong Exhibit No. 2," respectively.

Q. 38. The business of the Fidelity national bank was usually carried on in the name of the cashier, I suppose, as other banks do business?

A. So far as my knowledge goes, which I have from inspection of

the books, the cashier seemed to attend to the general duties
92 of the office of cashier—things that are understood to be the duties of cashier.

Q. 39. Well, I was referring to the custom among banks, which is, I believe, paper is made payable to the cashier of the bank, and signed by the cashier; is that so?

A. So far as my knowledge goes, the general officers of a bank are empowered to sign all drafts, etc., but the ordinary business of the day is signed by the cashier, although the other officers of the bank are empowered to sign. The correspondents of the bank have all the signatures before them.

Q. 40. Mr. Armstrong, the proof of this claim of the Chemical national bank so made to you, in the one that is involved in this suit, is it not?

A. It was presented to me for allowance.

Q. 41. And was returned by you disallowed?

A. Yes, sir; I think I returned it to you—returned it disallowed.

Q. 42. Look at the paper now shown you, Mr. Armstrong, and see if that is the proof of claim and the disallowance that was made?

A. Yes, sir; I think that is the paper.

Paper offered in evidence by counsel for complainant, marked "Armstrong Exhibit No. 3."

Q. 43. Mr. Armstrong, have you recently made a report of the assets of the Fidelity national bank in your hands as receiver?

A. The last one I made was for the quarter ending June 30th, 1891.

Q. 44. That shows all the assets now in your hands?

A. Yes, sir; the consolidated report shows that.

Q. 45. Is that in print?

A. Yes, sir; I have a copy of it sent to me by the comptroller.

Q. 46. Have you got a copy of it?

A. Yes.

Q. 47. Have you got it here, so that you can refer to it?

A. I can get it in a minute.

Witness produces same.

Q. 48. You have now in your hands, Mr. Armstrong, the report of June last, to which you have referred?

A. Yes, sir.

Q. 49. Can you state from that report what amount of cash you then had on hand?

A. $514,905.48.

Q. 50. In addition to that, what was the estimated value of the assets which had not been converted into cash?

93 A. That is very hard to tell. I cannot tell anything from this report about that. But, from a rough calculation, I would say it would run from $300,000 to $350,000.

Q. 51. What dividends have been declared to the creditors and when?

A. Fifty per cent. has been declared and paid on all proven claims.

Q. 52. Fifty per cent. in total, you mean?

A. Yes.

Q. 53. (Question omitted from transcript.)

A. Yes, sir; The first dividends was declared October 31st, 1887, twenty-five per cent.; the second dividend was declared June 15, 1889, and was a dividend of ten per cent.; the third dividend was declared June 30, 1890, and was a dividend of ten per cent.; and the fourth was a dividend declared August 5th, 1891, and was a dividend of five per cent., making a total of fifty per cent. that has been declared and paid to all creditors who have proved their claims.

Q. 54. Mr. Armstrong, this settlement of compromise that you speak of having been made with the Champion Machine Company and Whitely, Fassler & Kelly, when was that made?

A. Do you want the exact date?

Q. 55. No, I don't care for the exact date—about——

A. It was made by order of the United States court, in case No. 4093, Jan. 4, 1888.

Q. 56. What case was that?

A. I don't remember the case now; but it was made—the order was made on the application of the party, I believe; I don't know how though.

Q. 57. Was it a settlement with you as receiver, or were you authorized, as receiver, to accept the same terms?

A. I think it was an application of David Armstrong, receiver of the Fidelity national bank, to settle on the compromise proposed.

Q. 58. What were the terms of that settlement?

A. On the paper held by the Fidelity national bank of Whitely, Fassler & Kelly, endorsed by the Champion Machine Company, we were to accept the bonds of Whitely, Fassler & Kelly for fifty cents on the dollar and the bonds of the Champion Machine Company for fifty cents on the dollar, payable in five years, I believe; in five payments, one-fifth each year, with three per cent. interest.

Q. 59. Now, about the paper of the Champion Machine Company?

A. We didn't have any of the paper of the Champion Machine Company. The Champion were the endorsers on the Whitely, Fassler & Kelly paper.

94 Q. 60. So that the only paper included in this settlement was paper of Whitely, Fassler & Kelly, endorsed by the Champion Machine Company?

A. I think that was it. I don't remember that there was any Champion Machine Company paper—but there may have been some—however, I don't remember. It was all considered in the same boat, anyway, and all settled on the same terms.

Q. 61. Prior to your sending those bonds of Whitely, Fassler & Kelly to the Chemical national bank in June, 1890, I believe it was, — had then sent to you the notes of Whitely, Fassler & Kelly which they held?

A. They surrendered them up to me, and I made the settlement

here, that is the way I got their proportion of those bonds, and collected the two payments paid by the Champion Machine Company.

Q. 62. When the Chemical national bank paid you the thirty-three thousand and odd dollars, in November, 1887, by check as appears in "Watters Exhibit No. 9," did they, at the same time, turn over to you all the collateral which they still held that had been sent to them by the Fidelity national bank in February, May and June, and which had not been collected by them?

A. My recollection is that they turned over to me all the collateral except the $25,000 Wilshire note, which was not protested.

Q. 63. How long did that collateral remain in your hands?

A. From about November, 1887, until this letter of February 11, 1890.

Q. 64. What did you do with it on February 11, 1890?

A. I returned it all back again to the Chemical national bank, at their request, except the four Champion Machine Co. notes—one for $4,500.00, due July 24, 1887; one for $5,200.00, due July 28, 1887; one for $5,000.00 due August 3, 1887, and one for $4,500.00, due August 20, 1887; which four notes amount*ing* in all to $19,200.00, which I had included in the compromise with the Champion Machine Co., by order of the United States court, prior to this date of February 11, 1890.

Q. 65. These notes of the Champion Machine Co. were endorsed, were they, by Whitely, Fassler & Kelly?

A. Yes, sir; all of them.

Q. 66. And the settlement, to which you refer, and about which you have testified in your examination-in-chief, was upon these four notes? The cash and bonds that you sent to the Chemical national bank in June, 1890, was on these four notes?

95 A. Yes; for money that I had collected on that account.

Q. 67. No, Mr. Armstrong, the terms of the settlement, as I understood you, were each party was to pay fifty per cent.—that is the maker and endorser—each was to pay fifty per cent. of the claim?

A. Yes, sir.

Q. 68. And these payments were to be made in installments of one-fifth each year, for five years, with three per cent. interest?

A. Yes, sir; that is it.

Q. 69. The $4,489.00 in cash that you received, do you recollect whether that was from the Champion Machine Company or from Whitely, Fassler & Kelly?

A. Haven't paid anything.

Q. 70. Do you recollect how many payments we represented in that?

A. Two payments; one-fifth each.

Q. 71. So that this settlement had been made by you some two years before the remittance?

A. My recollection is, now, that it was in November, 1887; that is that the bonds dated from that time. I think one of these letters of mine would state it.

Q. 72. You spoke of some other payments having been made to

the Chemical national bank, on account of some of these notes, but on account of that settlement. Do you know of your own knowledge of any such payment having been made to them?

A. I only know that by having it from Mr. Quinlan, the cashier of the Chemical national bank; the paper that they had in their possession for a compromise on the same terms, whatever that was—some paper that they had; I cannot recall just how they had it. I have got a little mixed on that, and am not clear.

At the request of counsel for the complainant, Mr. Armstrong, the witness, will examine and report in regard to the above question.

At this point *of* taking of further testimony was adjourned to Tuesday afternoon, three o'clock, September 29, 1891.

TUESDAY AFTERNOON, THREE O'CLOCK, *September* 29, 1891.

Met pursuant to adjournment; same parties present.

Continuation of the cross-examination of DAVID ARMSTRONG.

Judge WORTHINGTON:

Q. 73. Mr. Armstrong, can you state any more definitely now as to the further payments which you said you heard from Mr. 96 Quinlan, cashier of the Chemical national bank, had been made upon any securities that the Chemical national bank had?

A. I have a letter from the Chemical national bank, under date of March 28, 1891, in which they acknowledge having received——

Q. 74. Just read the letter, please?

A.—

NEW YORK, *March* 28, 1891.

D. Armstrong, Esq., receiver.

DEAR SIR: Amos Whitely & Company bonds, $2,300.00, received; also check for $12.50. The amount of cash received in exchanging Champion bonds for Whitely bonds is $184.40.

Respectfully, WM. J. QUINLAN, JR., *Cashier.*

Q. 75. In this letter I see above the "D. Armstrong, receiver," the words "replying to yours of the 24th;" that is a letter of yours of the twenty-fourth of March, is it?

A. Yes, sir.

Q. 76. Is that the letter to which you referred yesterday as having sent on those additional securities?

A. Yes, sir.

Q. 77. Will you attach a copy of that letter to your deposition?

Copy attached, marked "Armstrong Exhibit No. 3*a*."

A. Yes, sir. That letter of mine of the twenty-fourth was in answer to theirs of the seventh of March.

Q. 78. Attach a copy of Mr. Quinlan's letter on the seventh of March, and a copy of yours of the twenty-fourth, please.

Letter of Mr. Quinlan's, dated March 7, 1891, hereto attached, marked "Armstrong's Exhibit No. 4," and letter of the twenty-fourth of March, 1891, to the Chemical national bank (copy of same) hereto attached, marked "Armstrong Exhibit No. 5."

Q. 79. Your understanding, then, is that the Chemical national bank had exchanged some of those Champion Machine Company bonds, which you had sent to them in a previous letter, dated June, 1890, for bonds of Amos Whitely & Co., and had received this amount of cash at the time of the exchange?

A. Yes; that is correct.

By consent of parties, counsel for complainant, after looking at case No. 4093, may ask any further questions of this witness in regard to same.

Redirect examination of DAVID ARMSTRONG.

By Mr. HERRON:

Q. 80. Look at the exhibit now shown you, marked
97 "Watters Exhibit No. 9," and state whether that does not purport to be an account of all transactions between the Fidelity national bank and the Chemical national bank, whether they belonged to the collateral account or not?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. Yes, sir; this appears from its face to bring up the balances—from beginning of this account—the balances shown on the books of the Chemical national bank, making the debit and credit entries up to the twenty-sixth of November, 1887.

Q. 81. From what time?

A. There is no date to the charges. The first date that appears, which is on the credit side, is July 6, 1887.

Q. 82. Does not this account commence with the balances of an account previously rendered—or does it not, rather, bring into it a balance?

A. It does not commence with a balance, but at the close of the account the balance——

Q. 83. No, I mean at the beginning. Look at the beginning and see if it does not commence with a balance from some previous account—on "Watters Exhibit No. 9?

A. Yes, sir; it does; there is an entry; near the top of the page is a balance from the last statement, $54,933.49.

Q. 84. Then, does it not enter errors which had been made in their previous accounts?

Question objected to by counsel for complainant. Exceptions reserved by respondent.

A. Yes, sir.

Q. 85. State under what arrangement the securities which had

been sent to the Chemical national bank, prior to the failure of the Fidelity national bank, and which had not been paid, were returned to you, as stated in your previous examination.

—. They were returned under a stipulation that was entered into between the Chemical National Bank of New York, the Montreal Bank of Chicago, and the Fidelity national bank, or rather, with myself as receiver.

Q. 86. Will you please furnish a copy of that stipulation?

A. Do you want both stipulations, or only the one between myself as receiver and the Chemical national bank?

Q. 87. Just the one between you and the Chemical national bank.

A. Yes, sir; I will furnish a copy of it.

Q. 88. State whether, in your last report to the comptroller,
98 in the item of disallowed claims, is included the amount claimed in this case by the Chemical national bank.

A. Top of the page is a balance from the last statement, $54,938.49.

Q. 89. Then does it not enter errors which had been made in their previous accounts?

Question objected to by counsel for complainant. Exception reserved by counsel for respondent.

A. Yes, sir.

Q. 90. State under what arrangement the securities which had been sent to the Chemical national bank, prior to the failure of the Fidelity national bank, and which had not been paid, were returned to you, as stated in your previous examination.

A. They were returned under a stipulation that was entered into between the Chemical National Bank of New York, the Montreal Bank of Chicago, and the Fidelity national bank, or, rather, myself as receiver.

Q. 91. Will you please furnish a copy of that stipulation?

A. Do you want both stipulations, or only the one between the Chemical national bank and myself as receiver?

Q. 92. Just the one between you and the Chemical national bank.

A. Yes, sir; I will furnish a copy of it.

Q. 93. State whether in the item in the account, your last collateral account of disallowed claims, is included the amount claimed in this case by the Chemical.

A. Yes, sir; it is.

Q. 94. And does that item state all the claims that have been presented to you and rejected, and, also, all claims appearing on the books which have not been proven in any way?

A. Yes, sir; so far as I know; it is intended to.

Q. 95. Those two items will show all the possible claims on which they may be entitled to a dividend?

A. Yes, sir.

Q. 96. Will you please attach to your deposition a copy of the letter written by you upon receipt of the collaterals, and state the date of it?

A. Yes, sir. It is dated November 29, 1887.

Judge WORTHINGTON:

Q. 97. Will you please produce, also, and attach to your deposition, the letter of the Chemical national bank, of November 25, 1887, referred to in yours of the twenty-ninth of November; you can attach a copy if you wish?

A. Yes, sir; I will.

99 Q. 98. Did you receive in response to yours a letter from the Chemical national bank, in response to yours of the twenty-ninth of November?

A. I do not think I did.

Q. 99. Was any account sent you by the Chemical national bank after you became receiver of the Fidelity national bank, prior to this one marked "Watters Exhibit No. 9"?

A. I could not answer without looking.

Q. 100. Will you please look, before the next day for taking testimony, and if you find a previous account, produce it?

A. Yes, sir; I will.

Adjourned to Tuesday afternoon, three o'clock, October 2, 1891.

TUESDAY AFTERNOON, THREE O'CLOCK, *October* 2, 1891.

Met pursuant to adjournment. Same parties present.

By Mr. HERRON:

Q. 101. Mr. Armstrong, have you found, and if so, will you now produce the account preceding the one marked "Watters Exhibit No. 9"?

A. Yes, sir; I have found it, and herewith produce it to be attached to my deposition.

Copy of same is hereto attached, marked "Armstrong Exhibit No. 3."

Q. 102. Do you also produce the stipulation between you as receiver of the Fidelity national bank, and the Chemical national bank?

A. Yes, sir; I herewith produce the stipulation.

A copy of same is attached hereto, marked "Armstrong Exhibit No. 7."

Q. 103. And the letter of the Chemical national bank, dated November 25, 1887; also, please produce and have a copy attached to your deposition.

Copy attached hereto, and marked "Armstrong Exhibit No. 8."

Q. 104. Please produce a copy of your letter of November 29, in reply to that, and attach it to your deposition.

A. I herewith produce it.

Copy of same hereto attached, marked "Armstrong Exhibit No. 9."

100 ARMSTRONG EXHIBIT No. 1.

Geo. Williams, president; Wm. J. Quinlan, Jr., cashier; J. I. Barr, ass't cashier.

Chemical national bank.

NEW YORK, *November* 17, 1887.

D. Armstrong, Esq., receiver.

DEAR SIR: Your favor of the fourteenth November has been received.

In respect to your formal demand that we remit the cash balance in our hands from proceeds of collateral notes, it is sufficient for us to say that we cannot now comply with it for the reason, if no other existed, that the levy under the attachment in the case of Bank of Montreal against the Fidelity national bank would *permit* us from so doing.

As to your claim that the proceeds of certain collateral notes deposited by the Fidelity national bank, should not be applied to discharge the indebtedness of Fidelity to the Chemical national bank generally, but only to the indebtedness growing out of the overdrafts of the Fidelity, we have to say that we do not regard the claim as well founded. As made by you it seems to rest upon the assumption that certain notes were deposited with us only to secure overdrafts which might be made by the Fidelity. This is not the fact, and if it were, we should still insist upon our right to retain and apply the proceeds to the payment of any and all indebtedness of the Fidelity to the Chemical, remaining after the indebtedness growing out of the overdraft was paid. Our position is, that we have a right to charge the Fidelity with all of its indebtedness to us arising from any cause, and that we apply the proceeds of the notes to the payment of this indebtedness, rendering the surplus of cash and the uncollected notes to you as receiver.

In regard to the note of J. W. Wilshire, endorsed by J. V. Lewis, we have to suggest that if Lewis received from the Fidelity national bank money by having the same discounted or otherwise, you, as receiver, could sue him for the amount of money which he received. We are not informed what the facts are, but on learning what they are, there will be no difficulty in making a s-tisfactory arrangement in respect to this note.

We trust all matters in difference between us will be amicably adjusted.

Very respectfully,

WILLIAM J. QUINLAN, JR., *Cashier.*

101 ARMSTRONG EXHIBIT No. 2.

Geo. G. Williams, president; Wm. J. Quinlan, Jr., cashier; J. I. Barr, ass't cashier.

Chemical national bank.

NEW YORK, *Nov.* 18, 1887.

D. Armstrong, Esq., receiver.

DEAR SIR: In addition to what I wrote you yesterday respecting that note for $50,000, of Wilshire, endorsed by Lewis, I would say that Mr. Harper, as V. P. of the "Fidelity Nat.," gave us written instructions "not to present any of the collateral paper for payment; we have advised parties we would order back and charge up here." H.'s letter is dated Cincinnati, May 19, '87.

Respectfully, WM. J. QUINLAN, JR., *C.*

ARMSTRONG EXHIBIT No. 3.

Received May 2, 1890.

Wm. Worthington:

The receiver of the Fidelity national bank hereby rejects the accompanying claim for the amount stated, he claiming that all sums realized, or which should have been realized, on the collaterals left with the Chemical national bank as security for this loan, should be credited on the same, and said claim reduced in that amount, and that all sums that may hereafter be realized on said collaterals should also be used to reduce the amount of this claim.

He is willing and now offers to accept a proof of claim from the Chemical national bank for the sum of two hundred thousand dollars, and to pay to it the dividends heretofore paid, and to be hereafter paid to other creditors thereon, without prejudice to its rights to sue upon the balance of said account not so allowed; with this stipulation, however, that should the court hold in any action that the receiver is right in his said claim, and is entitled to have all sums realized or which should have been realized on said collaterals credited on said claim, and a dividend paid only on the balance of the same, then, and in that case, all sums hereafter realized from said collaterals shall be applied to reduce the amount of said claim, herein offered to be allowed, and the same per-

102 centage on such collections accounted for, by the Chemical national bank, to the receiver as have been paid to it by him.

D. ARMSTRONG,
Receiver Fidelity National Bank.

Cincinnati, Ohio, April 25, 1890.

Complainant's Proof of Claim.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Personally appeared before me, the undersigned, a notary public, in and for said county, Wm. J. Quinlan, Jr., cashier of the Chemical National Bank of New York City, who, being duly sworn, says that the Fidelity National Bank of Cincinnati, Ohio, was, when it became insolvent, justly indebted to said Chemical national bank in the sum of three hundred thousand dollars ($300,000), with interest at the rate of six per cent. per annum, from the second day of March, A. D. 1887, upon the following claim, to wit: Money loaned on said second day of March. At the time of making said loan, said, the Fidelity national bank, delivered to said Chemical national bank as evidence thereof its certificate of deposit, a copy of which is hereto attached as part hereof and marked "Exhibit A," and at the time of the insolvency of said Fidelity national bank and the appointment of a receiver therefor, said Chemical national bank held as collateral security for said loan sundry bills and notes receivable delivered to it by said Fidelity national bank long prior to said insolvency, a list of which is hereto attached and made part hereof, and marked "Exhibit B."

Said sum of three hundred thousand dollars, with interest as aforesaid, was wholly due and payable to said Chemical national bank alone at the time of the insolvency of said Fidelity national bank and the appointment of a receiver therefor, said Chemical national bank having given no indorsements or assignments of the same, or of any part thereof; and affiant further says that he is, and at all times aforesaid was, the cashier of the said Chemical national bank, and that he knows of no set-off or other legal or equitable defense to claim or any part thereof, existing at or before the time of the appointment of said receiver. Affiant further says that since said appointment said Chemical national bank has collected certain of the notes given it as collateral security as aforesaid, but notwithstand-
103 ing such collections, said loan has not been fully paid, and therefore said Chemical national bank by affiant makes proof of said claim as it existed at the time of said insolvency and appointment of receiver, and requests the allowance thereof and the payment of dividends from the assets in the hands of said receiver upon said full sum of three hundred thousand dollars, with interest as aforesaid, ratably with other creditors so long as any part of said loan remains unpaid.

WM. J. QUINLAN, JR.

Sworn to and subscribed before me, this third day of April, A. D. 1890. Witness my hand and notarial seal.

[SEAL.] EDWARD P. BROWN,
Notary Public.

Cert. filed N. Y. Co., Kings Co.

Certificate of Deposit.

This certificate is not subject to check, but must be presented to draw the money.

EXHIBIT A.

The Fidelity national bank.

No. 345. CINCINNATI, *Feb.* 28, 1887.

E. L. Harper has deposited in this bank three hundred thousand dollars payable to the order of himself on return of this certificate in current funds.

$300,000.00. AMMI BALDWIN, *Cashier.*

Endorsed: E. L. Harper.

EXHIBIT B.

Note of J. W. Wilshire, endorsed by J. V. Lewis, due June 28, 1887	$25,000 00
Note of J. W. Wilshire, endorsed by J. V. Lewis, due July 28, 1887	25,000 00
Note of J. W. Wilshire, endorsed by J. V. Lewis, due August 28, 1887	25,000 00
Note of J. W. Wilshire, endorsed by J. V. Lewis, due October 1, 1887	25,000 00
Note of Champion Machine Company, due July 24, 1887.	4,500 00
Note of Champion Machine Company, due July 28, 1887.	5,200 00
Note of Champion Machine Company, due August 3, 1887	5,000 00
104 Note of Champion Machine Company, due August 20, 1887	4,500 00
Note of Swift's I. and S. works, due September 16, 1887.	25,000 00
Note of Swift's I. and S. works, due September 21, 1887.	25,000 00
Note of Riverside Iron and Steel Company, due September 28, 1887	15,386 35
Note of Riverside Iron and Steel Company, due October 8, 1887	15,386 35
Note of Whitely, Fassler & Kelly, due October 4, 1887.	1,633 07
Note of Whitely, Fassler & Kelly, due October 5, 1887.	5,370 04
Note of Whitely, Fassler & Kelly, due October 13, 1887.	5,640 00
Note of Whitely, Fassler & Kelly, due October 23, 1887.	5,608 09
Note of Whitely, Fassler & Kelly, due November 4, 1887	5,343 07
Note of Whitely, Fassler & Kelly, due November 5, 1887	4,000 00
Note of Whitely, Fassler & Kelly, due November 13, 1887	5,872 00
Note of Whitely, Fassler & Kelly, due November 19, 1887	5,209 20

Note of Whitely, Fassler & Kelly, due December 4, 1887	3,892 10
Note of Whitely, Fassler & Kelly, due December 5, 1887	4,890 10
Note of Whitely, Fassler & Kelly, due December 13, 1887	5,710 52
Note of Whitely, Fassler & Kelly, due December 19, 1887	5,178 40
Note of Whitely, Fassler & Kelly, due December 23, 1887	4,413 07
Note of Whitely, Fassler & Kelly, due January 5, 1888.	4,850 00
Note of Whitely, Fassler & Kelly, due January 13, 1888.	4,200 00
Note of H. R. Bundy, payable on demand	50,000 00

This note of Bundy was secured by $100,000 Latrobe Coal & Iron Co.'s bonds.

105 ARMSTRONG EXHIBIT No 3*a*.

Chemical national bank.

NEW YORK, *March 28th*, 1891.

Replying to yours of 24th—

D. Armstrong, Esq., receiver.

DEAR SIR: Amos Whitely & Co. bonds, $2,300, received; also check for $12.50. The amount of cash received in exchanging Champion bonds for Whitely bonds is $184.40.

Respectfully, WM. J. QUINLAN, JR., *Cashier*.

ARMSTRONG EXHIBIT No. 4.

Chemical national bank.

NEW YORK, *March* 7, 1891.

D. Armstrong, Esq., receiver.

DEAR SIR: Referring to yours of June 2, 1890, I find that upon presenting the 5,800 of Champion Machine bonds for the bonds newly issued, they make returns for only $\frac{3}{5}$ of 5,800. Now, in your accounting to us for the $9,742.38 of Champion bonds, these $5,800 were treated as of that amount of value, whereas, we should have received $9,700 bonds, on which $\frac{2}{5}$ principal had been paid, and then, when we received the new bonds for reduced principal, we would have $5,800 full face value.

Am I not right in this?

Yours, etc., WM. J. QUINLAN, JR.

Received March 24, 1891.

The letter of March 24, 1891, to have been copied and attached as "Exhibit No. 5," to Mr. Armstrong's deposition is incorporated in said depostion at page 32 (*ante* p. 138).

ARMSTRONG EXHIBIT No. 6.

Under instructions from counsel for appellant and appellee,
106 said Exhibit No. 6 is not printed in full. Said exhibit is in the form of an account between the Fidelity national bank and the Chemical national bank, opening on June 1st, 1887, with balances on June 18th and June 20th, and closing on July 1st, 1887. On June 17th the Fidelity bank is credited in the account with the loan made to it by the Chemical national bank of $200,000.00, marked "Loan." On June 18th the balance against the Fidelity bank, after allowing this credit, is $113,049.99. On June 20th the balance against the Fidelity national bank is $89,030.10. And on July 1st, 1887, the balance against the Fidelity national bank is $54,938.49.

ARMSTRONG EXHIBIT No. 7.

Received December 27, 1887, from Jacob Burnet, attorney for the Chemical National Bank of New York, the above-described notes, except such as are marked as in judgment, which are on file in their respective cases in the superior court of Cincinnati, and the note of Adam Wagner for $6,750.00 now in suit in the circuit court of Campbell county, Kentucky, and in the hands of James C. Wright, Esq., attorney for the prosecution of said suit, and except also the five notes of the Swift's iron & steel works, which are filed with the master commissioner of the chancery court of Campbell county, Ky., being part of the notes transmitted by E. L. Harper, vice-president of the Fidelity National Bank of Cincinnati, to said Chemical National Bank of New York, to be held by it as collateral security and the surrender of said paper being made without prejudice to, and without waiving any of the rights of the said Chemical national bank, or of the receiver of the Fidelity national bank in the premises, and especially without waiving the rights, if any it has, of said Chemical national bank to the proceeds of such of said paper as was pledged to it prior to the fourteenth day of June last; and especially, also, without prejudice or waiver of the rights of the receiver, if any he has, to the proceeds of such paper as was sent to the said Chemical national bank on the fourteenth day of June or thereafter, or to any claim for the failure by the Chemical national bank to make demand and protest of any such paper. And said receiver agrees to indemnify said Jacob Burnet and said Chemical national bank against the costs in any proceedings commenced upon any of said collaterals.

(Signed) DAVID ARMSTORNG,
Receiver Fidelity National Bank, Cincinnati, Ohio.

J. BURNET,
Attorney for Chemical National Bank of New York.

107 In superior court of Cincinnati:

No. 42779. Chemical National Bank *vs.* Sullivan, Meade & Bush and Wm. F. Hart. Claim $2,500.
No. 42781. Same *vs.* Wm. Stichtenoth. Claim $4,028.60. In judgment.
No. 42780. Same *vs.* Baum & Balz. Claim $5,000.
No. 42782. Same *vs.* The George Weber Brewing Company. Claim $3,092.07. In judgment.
No. 42783. Same *vs.* Same. Claim $10,126.66. In judgment.
No. 42784. Same *vs.* Fred A. Hahn. Claim $3,000.
No. 42785. Same *vs.* Alice Fogarty and James Fogarty, Jr. Claim $1,000.
No. 42786. Same *vs.* Ed. Berghausen and Wm. Stichtenoth. Claim $2,558.94. In judgment.
No. 42787. Same *vs.* Samuel Lowry and Lewis Kennedy. Claim $5,051.66. In judgment.
No. 42812. Same *vs.* The George Weber Brewing Company and Wm. Stichtenoth. Claim $14,052.99. In judgment.
No. 42839. Same *vs.* Wm. Stichtenoth. Claim $3,005. In judgment.
No. 42840. Same *vs.* The Hunter Manufacturing Company and J. M. Hunter. Claim $2,000.
No. 42841. Same *vs.* The Heuck's Opera House Company. Claim $1,000.
No. 42482. Same *vs.* Clarence H. Walker. Claim $3,000.
No. 42889. Same *vs.* Wm. H. Doane. Claim $5,000.
No. 42907. Same *vs.* John Simonton & Sons. Claim $5,000.

In the Hamilton common pleas:

No. 79292. Same *vs.* Miles & Rainforth. $1,000. Settled and paid.

In Campbell county (Ky.) circuit court:

Same *vs.* Adam Wagner, $6,750 and interest from April 20, '87.

C. Aultman & Co., due September 14, 1887	$1,000 00
" due September 21, 1887, balance unpaid	4,852 97
Baum & Baum, due August 3, 1887, in suit	2,500 00
Baum & Baum, due August 10, 1887, in suit	2,500 00
T. C. Callihan & Co., due August 14, 1887, balance due about	268 67
T. & H. Clasgens, due October 16, 1887	4,000 00
The Catoclin Iron Company, due August 10, 1887	3,175 00
108 Wm. H. Chatfield, due November 8, 1887	6,750 00
W. H. Doane, due September 12, 1887, in suit	5,000 00
Alice Y. Fogarty, due May 6, 1887, in suit	1,000 00
The Heuck's Opera House Company, due September 20, 1887, in suit	1,000 00
The Hunter Manufacturing Company, due September 16, 1887, in suit	2,000 00
Kayser & Hegner, due August 12, 1887, balance due	1,350 00

Lewis Kennedy, due August 15, 1887	10,000 00
" " September 11, 1887	10,000 00
" " August 15, 1887	16,178 40
The Latrobe Coal & Iron Company, due October 4, 1887.	2,489 65
Licking Iron Company, due August 1, 1887	3,557 00
" " " due August 6, 1887	4,217 14
The Riverside Iron & Steel Company, due August 7, 1887	3,781 16
The Riverside Iron & Steel Company, due October 8, 1887	15,386 35
The Riverside Iron & Steel Company, due September 28, 1887	15,386 35
John Simonton & Sons, due August 10, 1887, in suit	5,000 00
The Swift Manufacturing Company, due October 4, 1887.	1,019 09
The Swift Manufacturing Company, due August 13, 1887.	1,306 79
The Swift Manufacturing Company, due August 16, 1887.	1,306 80
The Swift Manufacturing Company, due September 2, 1887	1,531 33
The Standard Nail & Iron Company, due September 22, 1887	2,388 18
Sullivan, Meade & Bush, due July 29, 1887, in suit	2,500 00
Swift's iron & steel works, due Sept. 17, 1887, in suit, filed with Gus. Artsman, master commissioner	25,000 00
Swift's iron & steel works, due Sept. 21, 1887, in suit, filed with Gus. Artsman, master commissioner	25,000 00
Swift's iron & steel works, due Oct. 3, 1887, in suit, filed with Gus. Artsman, master commissioner	10,000 00
Swift's iron & steel works, due Aug. 2, 1887, in suit, filed with Gus. Artsman, master commissioner	10,000 00
109 Swift's iron & steel works, due Oct. 11, 1887, in suit, filed with Gus. Artsman, master commissioner	5,000 00
The Toronto Reaper & Mower Co., due July 28, 1887	2,500 00
The Toronto Reaper & Mower Co., due Sept. 26, 1887	1,810 00
C. H. Walker, due Sept. 12, 1887, in suit	3,000 00
The Wellston D'd'ry & Mach. Co., due Sept. 20, 1887	2,483 27
Adam Wagner, due Aug. 8, 1887, in suit, Campbell Co., Ky	6,750 00
J. W. Wilshire to John V. Lewis, June 28, 1887	25,000 00
J. W. Wilshire to Lewis Kennedy, Aug. 19, 1887	8,200 00
The Hoff, Renner & Adams Mfg. Co., Aug. 28, balance due	2,500 00

ARMSTRONG'S EXHIBIT No. 8.

On letter-head of the Chemical national bank, New York, November 25, 1887.

D. Armstrong, Esq., receiver.

DEAR SIR: Herewith find notes as described, being collaterals held for advances to Fidelity national bank:

	Champion Machine Company, due July 24, 1887, protested	$4,500 00
	Champion Machine Company, due July 28, 1887, protested	5,200 00
	Champion Machine Company, due July 31, 1887, protested	3,240 00
	Champion Machine Company, due August 3, 1887, protested	5,000 00
	Champion Machine Company, due August 5, 1887, protested	3,750 00
	Champion Machine Company, due August 6, 1887, protested	4,321 00
	Champion Machine Company, due August 20, 1887, protested	4,500 00
	Champion Machine Company, due August 28, 1887, protested	4,780 20
	Champion Machine Company, due August 31, 1887, protested	5,610 20
	Champion Machine Company, due September 4, 1887, protested	4,273 18
	Champion Machine Company, due September 5, 1887, protested	4,650 00
110	Champion Machine Company, due September 6, 1887, protested	5,480 10
	Champion Machine Company, due September 9, 1887, protested	5,420 10
	Champion Machine Company, due September 18, 1887, protested	5,200 00
	Champion Machine Company, due September 28, 1887, protested	6,720 00
	Champion Machine Company, due September 30, 1887, protested	5,000 00
	Champion Machine Company, due October 4, 1887, protested	3,841 08
	Champion Machine Company, due October 6, 1887, protested	4,500 00
	Champion Machine Company, due October 9, 1887, protested	5,817 00
	Champion Machine Company, due October 14, 1887, protested	4,500 00
	Champion Machine Company, due October 29, 1887, protested	4,500 00
	Champion Machine Company, due October 30, 1887, protested	4,000 00
	Champion Machine Company, due October 31, 1887, protested	3,000 00
	Champion Machine Company, due October 31, 1887, protested	5,000 00
	Champion Machine Company, due November 5, 1887, protested	3,800 00

Champion Machine Company, due November 7, 1887, protested	4,000 00
Whitely, Fassler & Kelly, Dec. 4, not due	3,829 10
Whitely, Fassler & Kelly, Dec. 5, not due	4,890 10
Whitely, Fassler & Kelly, Dec. 13, '87, not due	5,710 52
Whitely, Fassler & Kelly, Dec. 19, '87, not due	5,178 40
Whitely, Fassler & Kelly, Dec. 23, '87, not due	4,413 17
Whitely, Fassler & Kelly, Jan. 5, '88, not due	4,850 00
Whitely, Fassler & Kelly, Jan. 13, '88, not due	4,210 00
P. G. Thompson, Dec. 11, '87, not due	833 33
P. G. Thompson, Dec. 18, '87, not due	833 33
P. G. Thompson, Jan. 26, '88, not due	750 00
P. G. Thompson, Feb. 11, '88, not due	833 33
P. G. Thompson, Feb. 18, '88, not due	833 33
P. G. Thompson, Apr. 11, '88, not due	833 33
P. G. Thompson, Apr. 18, '88, not due	833 34
H. S. Bundy, dated March 14, 1887, demand	50,000

$100,000 bonds Latrobe Coal & Iron Co., Nos. 184 to 233, both inclusive, and Nos. 334 to 383, both inclusive, collateral to same, first coupon due January 1, 1888.

111 The July, 1887, coupons were not attached to bonds when received.

Whitely, Fassler & Kelly, due July 7, protest	$3,800 00
Whitely, Fassler & Kelly, due July 7, protest	2,650 00
Whitely, Fassler & Kelly, due July 13, protest	4,218 73
Whitely, Fassler & Kelly, due July 15, protest	3,840 20
Whitely, Fassler & Kelly, due July 16, protest	3,218 00
Whitely, Fassler & Kelly, due July 18, protest	4,874 00
Whitely, Fassler & Kelly, due July 21, protest	4,630 10
Whitely, Fassler & Kelly, due July 26, protest	4,883 40
Whitely, Fassler & Kelly, due July 28, protest	2,500 00
Whitely, Fassler & Kelly, due July 28, protest	2,620 40
Whitely, Fassler & Kelly, due Aug. 1, protest	2,210 40
Whitely, Fassler & Kelly, due Aug. 2, protest	2,340 10
Whitely, Fassler & Kelly, due Aug. 7, protest	5,300 00
Whitely, Fassler & Kelly, due Aug. 21, protest	4,270 93
Whitely, Fassler & Kelly, due Aug. 30, protest	4,710 09
Whitely, Fassler & Kelly, due Aug. 31, protest	5,480 10
Whitely, Fassler & Kelly, due Sep. 2, protest	3,911 07
Whitely, Fassler & Kelly, due Sep. 6, protest	5,880 09
Whitely, Fassler & Kelly, due Sep. 7, protest	4,820 03
Whitely, Fassler & Kelly, due Sep. 21, protest	4,740 00
Whitely, Fassler & Kelly, due Sep. 24, protest	5,420 71
Whitely, Fassler & Kelly, due Sep. 28, protest	3,107 90
Whitely, Fassler & Kelly, due Oct. 2, protest	4,520 00
Whitely, Fassler & Kelly, due Oct. 1, protest	5,891 04
Whitely, Fassler & Kelly, due Oct. 4, protest	4,633 07
Whitely, Fassler & Kelly, due Oct. 5, protest	5,370 04
Whitely, Fassler & Kelly, due Oct. 6, protest	5,317 00
Whitely, Fassler & Kelly, due Oct. 13, protest	5,640 00

Whitely, Fassler & Kelly, due Oct. 23, protest..... 5,608 09
Whitely, Fassler & Kelly, due Oct. 24, protest..... 5,330 44
Whitely, Fassler & Kelly, due Nov. 4, protest..... 5,343 07
Whitely, Fassler & Kelly, due Nov. 5, protest..... 4,000 00
Whitely, Fassler & Kelly, due Nov. 13, protest..... 5,872 00
Whitely, Fassler & Kelly, due Nov. 19, protest..... 5,209 20

Please to acknowledge receipt.

Very respectfully,

(Signed) WM. J. QUINLAN, JR., *Cashier.*

ARMSTRONG EXHIBIT No. 9.

CINCINNATI, OHIO, *November* 29, 1887.

Wm. J. Quinlan, Jr., cashier Chemical national bank, New York.

112 DEAR SIR: Your letter of the twenty-fifth inst. received, together with uncollected collateral notes and orders on Second National Bank of Springfield, Ohio, Third national bank, Cincinnati, and Hon. Jacob Burnet for notes in their hands. Owing to the fact of my men being witnesses in the Harper trial, which begins today, I will not be able to check up this paper at present; but will do so at as early a date as possible, and advise you. You will, of course, understand that I received from you these notes and securities, without prejudice to the claim made by me, as contained and fully set forth in my letter to you under date of November 14th, inst.

Very respectfully,

(Signed) DAVID ARMSTRONG, *Receiver.*

WATTERS EXHIBIT No. 2.

The Fidelity national bank.

When city checks are deposited, name the bank on which they are drawn. When foreign checks or drafts, name the State on which they are drawn.

CINCINNATI, *March* 2, 1887.

Credit account E. L. Harper:

Currency..... ....
Coin..... ....
Checks..... ..... $300,000

WATTERS EXHIBIT No. 3.

CINCINNATI, 1887.

The Fidelity national bank.

(Copy.)

Credit check..... .....
Transfer of funds..... .....
E. L. H..... .... $300,000
Charge Chemical, N. Y..... .....

113 WATTERS EXHIBIT No. 4.

Copy of letter dated—

CINCINNATI, OHIO, *Feb'y 28th*, '87.

To Wm. J. Quinlan, Jr., Esq., cashier Chemical national bank, New York city, N. Y.

DEAR SIR: Enclosed herewith, we hand you for credit our certificate of deposit, No. 345, for $300,000.00, with bills as collateral as follows:

Jung Brewing Co., due June 24, 1887	$25,000 00
Jung Brewing Co., due April 24, 1887	10,000 00
Swift's iron & steel w'ks, due May 18, '87	25,000 00
Swift's iron & steel w'ks, due May 28, '87	25,000 00
J. W. Wilshire, endorsed by—	
J. V. Lewis, due May 28, '87	25,000 00
J. V. Lewis, due June 28, '87	25,000 00
J. V. Lewis, due July 28, '87	25,000 00
J. V. Lewis, due Aug. 28, '87	25,000 00
Riverside iron & steel w'ks, due May 22, '87	15,000 00
Riverside iron & steel w'ks, due May 31, '87	15,000 00
C. Aultman & Co., due May 16, '87	10,000 00
C. Aultman & Co., due May 20, '87	10,000 00
C. Aultman & Co., due May 23, '87	10,000 00
C. Aultman & Co., due May 27, '87	10,000 00
C. Aultman & Co., due May 31, '87	10,000 00
Champion Machine Co., due June 1, '87	5,500 00
Champion Machine Co., due June 1, '87	5,378 01
Champion Machine Co., due June 10, '87	4,350 10
Champion Machine Co., due June 10, '87	4,610 00
Champion Machine Co., due June 11, '87	5,487 00
Champion Machine Co., due June 15, '87	5,700 00
Champion Machine Co., due June 22, '87	5,620 19
Champion Machine Co., due June 24, '87	5,850 00
Champion Machine Co., due July 24, '87	4,500 00
Champion Machine Co., due July 24, '87	5,200 00
Champion Machine Co., due Aug. 3, '87	5,000 00
Champion Machine Co., due Aug. 20, '87	4,500 00

We desire to keep a large reserve with you, and we trust you will make the rate as low as you proposed some time since. Please place the amount to our credit and advise the rate.

Respectfully yours,

(Signed) E. L. HARPER, *V. P.*

114 WATTERS EXHIBIT No. 5.

Copy of letter dated—

CINCINNATI, OHIO, *May* 21, 1887.

To Chemical national bank, New York city.

GENTLEMEN: Enclosed herewith we hand you to hold as collateral the following bills:

H. S. Bundy, demand	$50,000 00
Swift's iron & steel w'ks, May 13, 4 mos.	25,000 00
Swift's iron & steel w'ks, May 18, 4 mos.	25,000 00
J. W. Wilshire, April 28, 5 mos.	25,000 00
Riverside iron & steel w'ks, due Sept. 28th	15,386 35
Riverside iron & steel w'ks, due Oct. 8th	15,386 35
Whitely, Fassler & Kelly, April 1st, 6 mos.	4,633 07
Whitely, Fassler & Kelly, April 1st, 7 mos.	5,343 07
Whitely, Fassler & Kelly, April 1st, 8 mos.	3,892 10
Whitely, Fassler & Kelly, April 20, 6 mos.	5,608 09
Whitely, Fassler & Kelly, April 20, 8 mos.	4,413 17
Whitely, Fassler & Kelly, May 2nd, 5 mos.	5,370 04
Whitely, Fassler & Kelly, May 2nd, 6 mos.	4,000 00
Whitely, Fassler & Kelly, May 2nd, 7 mos.	4,890 10
Whitely, Fassler & Kelly, May 2nd, 8 mos.	4,850 00
Whitely, Fassler & Kelly, May 10, 5 mos.	5,640 00
Whitely, Fassler & Kelly, May 10, 6 mos.	5,872 00
Whitely, Fassler & Kelly, May 10, 7 mos.	5,710 52
Whitely, Fassler & Kelly, May 10, 8 mos.	4,210 00
Whitely, Fassler & Kelly, May 16, 6 mos.	5,209 20
Whitely, Fassler & Kelly, May 16, 7 mos.	5,178 40

Will you kindly return me the following: C. Aultman & Co., due May, five pieces; Swift iron & steel works, due in May, two pieces; Champion Machine Co., due in June, eight pieces; June Brewing Co., due in June, one piece; J. W. Wilshire, due in May, one piece; Riverside Iron & Steel Co., due in May, two pieces. We will pay the loan July 15th, 1887, if agreeable to you, and will pay interest now to that date.

Respectfully yours,

(Signed) E. L. HARPER, *V. P.*

115 WATTERS EXHIBIT No. 6.

Chemical national bank.

NEW YORK, *July* 23, 1887.

D. Armstrong, Esq., receiver.

DEAR SIR: Your favor of the — has been received.

Mr. J. V. Lewis has paid note of J. W. Wilshire, endorsed by him, $25,000, due July 28.

Resp'y, WM. J. QUINLAN, JR.

WATTERS EXHIBIT No. 7.

Chemical national bank.

NEW YORK, *August* 24, 1887.

Receiver of the Fidelity bank, Cincinnati, Ohio:

We have received payment for collateral note as follows: J. V. Lewis, $25,000, due August 28, 1887.

Very respectfully, WM. J. QUINLAN, JR., *Cashier.*

WATTERS EXHIBIT No. 8.

Under instructions from counsel for appellant and appellee, said Exhibit No. 8 is not printed in full. It is in the form of an account between the Fidelity national bank and the Chemical national bank, running from July 6th, 1887, to November 26th, 1887, and shows on the right-hand side the collections made by the Chemical national bank upon the collateral securities sent to it by the Fidelity national bank in March, May and June, 1887; and upon the left-hand side charges for fees, etc., relating to such collections.

WATTERS EXHIBIT No. 9.

Under instructions from counsel for appellant and appellee, said Exhibit No. 9 is not printed in full. It is a more detailed account of the same nature as that shown in Watters Exhibit No. 8;
116 and shows in addition on the left-hand side the charging off on August 25th, 1887, of $300,000.00 being the loan of March 2nd, 1887, and on October 1st, 1887, of $200,000.00, being the loan of June 17th, 1887, and the remittance on November 26th, 1887, by the Chemical national bank to the Fidelity national bank of $33,809.89, the balance to the credit of the Fidelity national bank, as shown by said account of collections.

Under instructions from counsel for appellant and appellee, said Watters Exhibit No. 10 is not printed. The same exhibit has been printed already in a separate publication, and said publication shall be treated as part of this printed record and bound therewith.

THE STATE OF OHIO, }
Hamilton County, } ss:

I, Wm. C. Herron, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named J. Harry Watters and David Armstrong, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions were reduced to writing, subscribed as above set forth, by E. V. Ryan, in my presence, who is not in any way interested in said cause, and were subscribed by the said witness- respectively, in my presence, and continued from day to day, as above set forth, that said depositions were taken at the time and place specified in

the notice hereto attached, and that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof, I have hereunto set my hand and official seal, this sixth day of October, A. D. 18—.

WM. C. HERRON,
[SEAL.] *Notary Public, Hamilton County, O.*

Total cost of taking depositions, $45.00.

Received of David Armstrong the sum of $45.00 in full of my fees, as above specified, and also in full of constable's fees. The witnesses were paid their fees.

WM. C. HERRON,
Notary Public.

Stipulation.

117 And afterwards, to wit, on the 20th day of November, A. D. 1891, the following stipulation was filed in the clerk's office of said court clothed in the words and figures following, to wit:

CINCINNATI, *Oct.* 28, 1891.

Wm. Worthington, Esq.

DEAR SIR: I find that Stewart, trustee for E. L. Harper & Co., claims to have paid the Chemical national bank on March —, 1891, $2,917.12, a four per cent. dividend on fifteen notes of Whitely, Fassler & Kelly, endorsed by E. L. Harper & Co., of $74,819.16, all of which I believe were held as collateral to $300,000.

Please advise me as soon as you can hear from your client if you will stipulate that this payment may be added to our testimony.

Yours, JOHN W. HERRON.

It is agreed that the above payment was made as stated, being upon collateral described in the bill of complaint as Whitely, Fassler & Kelly notes.

WM. WORTHINGTON,
Counsel for Complainant.

Memoranda of Decree.

And afterwards, to wit, on the second day of July, A. D. 1892, the following memoranda with reference to form of decree, was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Memoranda of Judge Sage.

FORT RUSSELL, WYOMING, *June* 28, 1892.

I have endorsed for entry the decree as prepared by Judge Worthington, for the reasons:

1. I did not find that the loan was made by E. L. Harper for his individual use. Personally I have no doubt that such was the fact from what I know of the man, and of the circumstances of his rela-

tion to the bank and to the wheat deal, but I did not feel authorized to draw that inference from the fact in evidence, that he appropriated the proceeds of the loan, almost immediately to his own use. It was negotiated by him as vice-president of the Fidelity bank. In law the loan was a loan to the Fidelity bank. The
118 Chemical bank dealt only with the Fidelity bank. They are the principals. The Chemical bank has all the rights of a principal, and the Fidelity incurred all the liabilities of a principal, whatever its rights against Harper.

2. It is not necessary to include in the decree a statement of the offer made by the defendant to allow and pay, conscientiously and without prejudice, dividends on the sum of $200,000, nor a statement of the payments made to the Chemical bank after its proof of claim. The reasons for the conclusions reached by the court are set forth in the opinion, a copy of which will be included in the transcript and certified upon appeal. It will, of course, be the duty of the appellate court to look to the record to determine whether the finding and conclusions of the court below were warranted by the facts and law of the case. It will not be limited by the language of the decree.

GEORGE R. SAGE.

Assignment of Error by Defendant.

And afterwards, to wit, on the eighth day of July, A. D. 1892, the following assignment of error was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

United States Circuit Court, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK OF NEW YORK CITY, New York,
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio.
} Assignment in Error.

Now comes the said defendant and presents this, his assignment of errors, to the final decree of the court herein, to wit:

That the court erred in finding that there was due to the said complainant from the Fidelity National Bank of Cincinnati, as of the twenty-first of June, 1887, the sum of $205,450.00.

That the court erred in refusing to credit on the amount found due the complainant the sums collected by it after the twenty-fifth of April, 1890, from collaterals held by it as security for the
119 loan claimed to have been made by it to the Fidelity national bank.

That the court erred in refusing to compel the complainant to exhaust the collaterals held by it as security for said alleged loan before ordering dividends upon the same to be paid to it, and in

ordering dividends to be paid to complainant upon said claims without reference to the collaterals still held by it.

JOHN W. HERRON,
Solicitor for Defendant.

Appeal Bond of Defendant.

And afterwards, to wit, on the twenty-seventh day of July, A. D. 1892, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, David Armstrong, receiver of the Fidelity National Bank of Cincinnati, as principal, and David Armstrong and W. S. Rowe, as sureties, are held and firmly bound unto the Chemical National Bank of the City of New York in the full and just sum of one thousand dollars, to be paid to the said The Chemical National Bank of New York, and its certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, our executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a term of the circuit court of the United States for the southern district of Ohio, in a suit depending in said court between The Chemical National Bank of New York, plaintiff, and David Armstrong, receiver of the Fidelity National Bank of Cincinnati, defendant, a decree was rendered against the said David Armstrong, receiver of the Fidelity national bank, and the said David Armstrong, receiver as aforesaid, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Chemical National Bank of New York, citing and admonishing it to be and appear at a session of the United States circuit
120 court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the eighth day of August next:

Now, the condition of the above obligation is such that if the said David Armstrong, receiver as aforesaid, shall prosecute said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

D. ARMSTRONG,
[SEAL.] *Receiver of the Fidelity Nat. Bank, Cin'ti.*
D. ARMSTRONG.
W. S. ROWE.

Sealed and delivered in presence of:

——— ———.

Approved by—
JOHN W. HERRON.

And afterwards, to wit, on the 22nd day of April, A. D. 1895, the following mandate was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Mandate.

Missing.

And afterwards, to wit, on the 7th day of September, A. D. 1895, an order was made upon the order book of said court, clothed in the words and figures following, to wit:

Order Book A, page 61.

Special Examiner Appointed.

By consent of parties E. V. Ryan is appointed examiner in this cause. Thereupon came said E. V. Ryan and accepted said appointment and was duly sworn to perform the duties of said examiner.

And afterwards, to wit, on the 17th day of September, A. D. 1895, the following oath of special examiner was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

121 *Oath of Special Examiner.*

United States Circuit Court, S. D. O.

CHEMICAL NATIONAL BANK } No. 4339.
vs.
DAVID ARMSTRONG, ETC.

I, Effie V. Ryan, having heretofore been appointed special examiner in the above-entitled cause, do solemnly swear that I will faithfully and impartially perform my duties as such master, agreeable to the order of the court, to the best of my ability and understanding. So help me God.

EFFIE V. RYAN.

Sworn to before me, and signed in my presence, this 17th day of September, A. D. 1895.

[SEAL.] B. R. COWEN, *Clerk.*

And afterwards, to wit, on the 4th day of November, A. D. 1895, the following depositions were filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Deposition of Wm. J. Quinlan, Jr., et al.

U. S. Circuit Court, Southern District of Ohio, Western Division.

CHEMICAL NATIONAL BANK, Plaintiff,
vs.
DAVID ARMSTRONG, as Receiver of the Fidelity National Bank, Defendant.

Testimony on behalf of plaintiff taken under the annexed notice before Julius W. Rothchild, a notary public in and for the city and county of New York, on Thursday, October 24, 1895, at 11 a. m., in the city of New York.

Appearances: William Worthington, Esq., and George C. Kobbe, Esq., for plaintiff; John W. Herron, Esq., for defendant.

WILLIAM J. QUINLAN, of lawful age, being by me first duly cautioned and sworn as a witness on behalf of the plaintiff, deposes and says as follows:

By Mr. WORTHINGTON:

122 Q. 1. You are the cashier of the Chemical National Bank of New York City, are you not?

A. I am.

Q. 2. How long have you held that position?

A. Since 1878.

Q. 3. Have you made search among the files of the Chemical national bank to see whether you can find any of the correspondence with the Fidelity National Bank of Cincinnati, referring to the reconcilement of the account current rendered by the Chemical bank to the Fidelity bank in April, 1887, for the transactions between those two banks for the month of March, 1887?

A. I have.

Q. 4. Can you find anything?

A. I cannot.

Q. 5. What is the practice of the Chemical bank of keeping such?

A. Notations would be made on the slips received from the Fidelity bank; those notations would be made by our book-keeper and to write to the Fidelity.

Q. 6. Was it the practice to keep any record of the notations?

A. No, sir.

Q. 7. Look at the paper which I now hand you, being the one heretofore offered in evidence in this case and marked "Letter as to reconcilement of April account, E. B. R., special examiner," being a letter written upon the letter-head of the Fidelity National Bank of Cincinnati, 5–12–'87, meaning May 12, 1887, and having at the end of it a letter dated New York, May 19th, 1887, signed W. J. Quinlan, Jr., per F., and I will ask you if that is one of the letters

from the Fidelity bank with notations made by your bank to which you have referred?

A. It is.

Q. 8. Do you recognize the handwriting of the letter of May 19, 1887?

A. I do; it is that of Mr. Firth.

Q. 9. He was then what?

A. He was then, I think, general book-keeper at that time and had charge of that department, the reconcilement of account. He is not with us now.

Q. 10. I hand you a document already offered in evidence in this case and marked "Reconcilement sheet for April, E. B. R., special examiner," being a sheet that was made out by the Fidelity national bank of the differences between the account current as kept by the Chemical national bank for the month of April, 1887, and the same account as kept upon the books of the Fidelity Bank of Cincinnati, and ask you whether the reconcilement sheet
123 ever came or was sent by the Fidelity bank to the Chemical bank, or whether it was the practice to send such sheets showing differences of account between one bank and the other?

A. I doubt very much if this sheet was ever in our hands; but my impression is it was the custom of the Fidelity bank to make notations on the account and not to return the sheet itself.

Q. 11. When you say notations of that account, do you mean of that account shown on the letter of May 12?

A. Yes, sir.

Q. 12. I hand you another paper which has heretofore been offered in evidence in this case marked "Letter from Quinlan to Baldwin, May 18th, 1887, E. B. R., special examiner," and purporting to be a letter dated May 18th, 1887, written on the letter-head of the Chemical national bank and addressed to Ammi Baldwin, cashier, and ask you if you know the handwriting?

A. Yes, sir; that was written by Mr. Firth.

Q. 13. Was he at the time a clerk in the Chemical bank?

A. Yes; he was the general book-keeper and had charge of that reconcilement department.

Q. 14. I also hand you another letter heretofore offered in evidence and marked "Letter from Quinlan to Ammi Baldwin, May 11, 1887, E. B. R., special examiner," and being upon the letter-head of the Chemical national bank and dated May 11, 1887, addressed to Ammi Baldwin. Do you recognize that?

A. Yes; that was also written by Mr. Firth.

Q. 15. I also show you another letter heretofore offered in evidence in this case and marked "Letter from Quinlan to Armstrong, E. B. R., special examiner, July 6th, 1887," being a letter upon the letter-head of the Chemical national bank, dated July 6th, 1887, and addressed to Edward Armstrong, Esq., receiver, and purporting to be signed by you.

A. That was written by me.

Q. 16. Do you know whether or not prior to the decision of the Supreme Court of the United States in the case of The Western Na-

tional Bank against Armstrong, a decision rendered in the spring of 1894, believe it was, it was or was not a usual thing for a national bank to borrow money?

Objected to as incompetent and irrelevant.

A. Very usual.

Q. 17. What officer acted for the borrowing bank in such transactions?

A. Either the president, vice-president, cashier, or assistant cashier.

124 Q. 18. Prior to that decision, was it customary for the lending bank to demand proof of the authority of the officer of the borrowing bank making the request in the manner of a resolution of the board of directors from the borrowing bank authorizing the loan?

A. No, sir. I can't say I ever heard of such a request.

Q. 19. Prior to the decision of the Supreme Court of the United States to which I have referred, had the Chemical bank made loans to banks other than the loan involved in this case to the Fidelity national bank?

A. Never to the Fidelity national bank, but it has been our practice to make such loans for many years.

Q. 20. And upon what authority would the loans be made?

A. Upon the request of the official of the borrowing bank.

Q. 21. In large amounts or in small?

A. All kinds of amounts—large and small.

Cross-examination by Mr. HERRON:

Q. 1. I believe you were instrumental in making this loan to the Fidelity national bank, were you not?

A. Yes, sir.

Q. 2. And you did not require any authority from the directors of the Fidelity national bank?

A. No, sir.

Q. 3. And it is your idea that the president, cashier or assistant cashier of a national bank can borrow whatever sum of money he pleases without any authority from the board of directors?

A. That is the usual custom of business.

Q. 4. That was the usual custom with your bank, and you believe that to be the usual custom of banks, do you?

A. That was, without qualification.

Q. 5. That the assistant cashier or cashier could borrow whatever amount of money he pleased?

A. The books of this bank would show that and that the borrowing bank received so much to its credit.

Q. 6. It was your custom or the custom of your bank, before the decision of the Supreme Court, to lend on the request of a cashier or assistant cashier of a national bank, whatever sum he saw fit to ask of you?

A. Yes.

Q. 7. Without asking for any authority from his board of directors?

A. Yes, that is the fact.

Q. 8. On what did you usually make these loans?

A. On bills receivable, frequently a receiving a certificate
125 of deposit and the receivables securing that certificate or loan; the certificate of deposit taking the place of a note, because the Comptroller of the Currency had for some years held that a national bank could not give a note except its circulating notes.

Q. 9. Then you know the Comptroller of the Currency had decided that a national bank could not give a note, did you?

A. That would seem to be the impression in our minds and in the minds of others that a national bank had no authority to give a note other than their circulating notes. When a bank wished to borrow—shall I use the expression—it "got around" that fact by sending on a certificate of deposit with the bills receivable.

Q. 10. Then it was the understanding of your bank and of others that a national bank could not give a note for borrowed money?

A. No, sir; I can't say it was the understanding, but it was our impression that some Comptroller of the Currency had held that that was the case, that national banks could not give a note.

Q. 11. And it was your impression at that time that a national bank could not give a note for money?

A. No. We thought he was wrong, as has been proven since, because the subsequent Comptroller of the Currency had given them that authority.

Q. 12. But it was your impression at that time that the Comptroller of the Currency had decided that a national bank could not give a note for borrowed money?

A. I can't say whether it was that particular time, but I know there was a time, but it is not distinct in my mind as to the particular date that there was some question in our minds whether the Comptroller of the Currency would justify the giving of a note by a national bank other than a circulating note.

Q. 13. And it was to get around that decision that you adopted the plan of a certificate of deposit?

A. Excuse me. We didn't adopt the plan. The borrowing banks adopted the plan.

Q. 14. Your bank adopted the plan of requiring something of that kind?

A. No; we didn't even do that. We would sometimes make a loan to a bank without that certificate of deposit—merely upon the request in a letter that they had sent certain collaterals to secure a certain advance of loan. If they preferred to send a certificate of deposit it was all right. We knew they got the money.

Q. 15. You knew, too, that the certificate of deposit did not represent what it purported to represent?

126 A. We didn't know much about it. We didn't ask the question.

Q. 16. You knew that the certificate of deposit was intended to represent a debt of the bank to the loaning bank?

A. We supposed this. We knew nothing whatever, but we supposed this, that in order to avoid rediscounts the borrowing bank issued this certificate of deposit, which fulfilled two purposes; it increased their deposit line, which would be showing strength, and it did not appear as a rediscount nor a loan.

Q. 17. You knew that that certificate of deposit in such a case did not represent money deposited in a bank, as it purported to be?

A. No, excuse me; we didn't know any such thing.

Q. 18. You did not know that?

A. No; we didn't know that.

Q. 19. In whose name were those certificates of deposit usually issued?

A. Various names; sometimes in the name of an officer of a bank, as an individual, sometimes in his name as an officer of the bank, sometimes they would make them payable to the Chemical national bank, sometimes they would make them payable to W. J. Quinlan, Jr., cashier—I cannot remember, because it is so long a time ago and sometimes they would say we had deposited that money in the bank.

Q. 20. In the case where it was made payable—where the certificate of deposit was made payable to one of the officers of the bank did you suppose that officer had deposited the money in the bank?

Objected to as immaterial.

A. We knew nothing about it. We couldn't tell. We didn't ask the question, hence we could not tell.

Q. 21. You were not in the habit of asking any questions about it?

A. No, sir; because we didn't depend upon that certificate at all.

Q. 22. In the case that is now under consideration, did you suppose that Edward L. Harper had deposited in the Fidelity national bank $300,000?

A. I don't know what I did suppose at the time; it is 8½ years ago.

Q. 23. You did not know whether that bank owed him $300,000 or not?

A. No; I didn't know that.

Q. 24. And you asked no questions about?

A. Asked no questions about it. We supposed the Fidelity national bank wanted to borrow $300,000, and they sent on that
127 certificate with the collaterals attached, rather than send a note; that is what we supposed. If we had not supposed the Fidelity national bank wanted that money, the money would not have been loaned.

Q. 25. You regarded the certificate of deposit of the Fidelity national bank to the order of E. L. Harper as an obligation to the Chemical national bank for that amount of money, did you?

Objected to as incompetent and immaterial.

A. If the Fidelity national bank had not sent any certificate of deposit at all, the loan would have been made upon the collaterals.

The certificates of deposit, as I remarked before, were usually sent for the purpose of avoiding the matter of using a note. The transaction would have been a complete transaction, so far as we were concerned, and the loan would have been made without that certificate of deposit. We didn't rely upon the certificate of deposit. We relied upon the fact that we credited $300,000 the Fidelity national bank.

Q. 26. Can you answer my question?

A. I have tried to do it.

Q. 27. My question was whether you regarded the certificate of deposit as an obligation of the Fidelity national bank to the Chemical national bank when you advanced the money?

A. We considered them in our debt $300,000. Had they sent the certificate of deposit without the collaterals they would not have probably got the loan. Had they sent the collaterals without the certificate of deposit they would have got the loan probably.

Q. 28. Did you regard the certificate of deposit as an obligation of the Fidelity national bank to the Chemical bank?

A. Yes; I regarded it in that sense.

Q. 29. In such loans as you have testified to, did you not in all cases require collaterals for the loans made, either bills receivable or bonds, or something of that character?

A. I think we did. I can't recall any case where we have not required or where we have not received them.

Q. 30. Were not loans made on the faith of collaterals which were sent?

Objected to as before.

A. There were two reasons why we would make the loan. The collaterals to the credit of the borrowing bank. We had recourse to two horns. If the collaterals failed us, we had the borrowing bank; if the borrowing bank failed us we had the collaterals.

Q. 31. But in no case did you make a loan without having, as you regarded it, sufficient collateral to secure the loan?

128 A. That is the common method, to have sufficient security. If the borrowing bank was sufficiently—strong—I don't know; we might make a loan, but it was not the custom, because we never asked it.

Q. 32. And you have no recollection of ever having done so?

A. No; I can't recollect any case.

Q. 33. In regard to this matter of these letters as to the reconcilement of the accounts, have you any personal knowledge of the matter at all?

A. Nothing, except I notice that it is our general book-keeper's memorandum. They have not come before me.

Q. 34. They did not come before you at that time?

A. No, sir.

Q. 35. You had nothing to do with the correspondence, whatever there was?

A. No; Mr. Firth attended to that.

Q. 36. He attended to it all, did he?

A. Yes; he attended to it all.

Q. 37. Have you any knowledge of ever having seen any of the letters in regard to the reconcilement of the accounts of the Fidelity national bank?

A. No; there were probably no letters written except those which I saw this morning.

Q. 38. Have you any recollection of ever having seen them at the time the transactions took place?

A. No; I doubt very much if I saw them.

Q. 39. What has become of Mr. Firth?

A. He is the confidential clerk of the Goelette estate; he is in New York city.

Q. 40. What do you know in regard to the custom of the Fidelity national bank as to sending the reconcilement sheets to your bank?

A. I really know very little about it. Mr. Firth knows a great deal more about it than I do.

Q. 41. You don't know whether they sent the original reconcilement sheets to your bank, or not, personally?

A. Not personally; I don't know.

Redirect examination:

Q. 1. You have stated in your cross-examination that in making the loans you did not rely upon the certificates of deposit. What was it you did rely upon?

A. We relied upon the credit of the bank and upon the collaterals which they sent.

Q. 2. Were those loans made to banks that kept an account with you, or to banks with whom you had no other dealings—the loans of which you have testified?

A. Loans to banks which kept accounts with us.

129 Q. 3. What was done with the money loaned; was it remitted to them, or credited to their account?

A. Placed to the credit of their account on the books of the Chemical national bank.

Q. 4. Then the making of the loan would appear upon the account you sent to the borrowing bank, as it did in this instance?

Objected to as irrelevant and incompetent.

A. Always.

Q. 5. And if you heard nothing with reference to that account, no explanation—did you ever afterwards hear of a bank repudiating the loan?

Objected to as irrelevant and incompetent.

A. We always expected the bank or banks to whom we sent a statement of account to report within a reasonable time any discrepancies, omissions or irregularities of any kind.

Answer objected to as incompetent and immaterial.

Q. 6. You mean the usage between a bank depositing with you

in that regard is the same as that of an ordinary individual keeping a deposit account?

Objected to as incompetent and irrelevant.

A. Always.

GEORGE G. WILLIAMS, of lawful age, being by me first duly cautioned and sworn, as a witness on behalf of the plaintiff, deposes and says as follows:

By Mr. WORTHINGTON:

Q. 1. You are the president of The Chemical National Bank, the plaintiff in this action?

A. I am.

Q. 2. How long have you been connected with the Chemical national bank, and in what capacities?

A. I have been connected with the Chemical bank over 40 years, and was discount clerk, paying teller, cashier and president.

Q. 3. When did you become cashier?

A. I became cashier in 1855.

Q. 4. When did you become president?

A. First of January, 1878.

Q. 5. So that you have been with the bank in those two capacities ever since 1855?

A. Yes—40 years.

Q. 6. Do you know what was the usage as to banks borrowing money prior to the decision of the Supreme Court of the United States in the case of The Western National Bank *vs.* Armstrong, rendered about a year ago last spring?

130 A. I do.

Q. 7. State whether or not it was a usual thing for a bank to borrow money prior to that decision?

A. It was.

Q. 8. How did the borrowing bank make the loan; through what channel?

A. By the rediscount of its bills receivable by its own note secured by collateral or by a certificate of deposit.

Q. 9. Who acted for the borrowing bank?

A. Any of the officers of that bank, president, vice-president or cashier.

Q. 10. I am speaking in my own mind—possibly I have not mentioned the fact—of one bank borrowing from another. Is that what you have been having in your mind in answering?

A. Yes.

Q. 11. Did the lending bank, prior to the decision I have mentioned, ever require any resolution from the board of directors of the borrowing bank as to the authority of the officer of the bank to make the loan?

A. Never. The decisions of the court, in this State, are clear and specific on that point.

Q. 12. You, of course, in your forty years of service, have become familiar with the usages of banks in this city?

A. Yes, sir.

Q. 13. Are you in any way connected with the clearing-house in this city?

A. Yes, sir.

Q. 14. In what capacity?

A. I am now a member of the clearing-house committee, my term of service as president of the clearing-house expiring about a year ago.

Q. 15. How long were you president?

A. The last term two years. The rules of the clearing-house rotate the president every two years.

Q. 16. How long have you personally been connected with the clearing-house in the capacity of an officer of the clearing-house association, or a committee, or otherwise, taking an active part in its affairs?

A. Many years. I could not say exactly.

Cross-examined by Mr. HERRON:

Q. 1. You say it was the custom of banks to loan money to other banks upon the request of either the president, cashier or assistant cashier?

A. Yes, sir.

Q. 2. It made no difference as to the amount of the loan or the officer on whose request it was made, except he should be president, cashier or assistant cashier?

131 A. I said in my testimony, president, vice-president and cashier.

Q. 3. Then change the question in that respect. You don't recognize the assistant cashier, then as one of the officers entitled to borrow money for the bank?

A. We do, provided he is authorized to draw checks on the bank.

Q. 4. Then you say a president, vice-president, cashier or assistant cashier had power to borrow any amount of money for a bank and that other banks would loan it at his request?

A. Provided his signature was forwarded to the bank as an executive officer.

Q. 5. And you did not consider the board of directors at all in the matter?

A. No.

Q. 6. Do you know anything about banks borrowing money for the use of their own banks; have you had any experience in that respect?

A. Banks are borrowers of their depositors. They are borrowing all their deposits, payable on demand from their depositors.

Q. 7. That was not my question as to deposits. My question is about your experience with banks borrowing money from other banks?

A. No, sir.

Q. 8. You know of no case where any bank you were connected with or have known of borrowing money from other banks, except as deposits were made?

Objected to as misleading.

A. I have had no experience in that line.

Q. 9. Either in your own bank or your knowledge of other banks?

A. No, sir; as a borrowing bank.

Q. 10. In the cases where money is loaned to other banks, is it or not usual to take the note of the bank?

A. It was usual to take the note of the bank, secured by collateral or a certificate of deposit, secured by collateral or rediscount their bills receivable.

Q. 11. Why did your bank take a certificate of deposit?

A. A great many banks borrowing money wish to avoid the fact appearing in their statements that they are borrowing money, and a certificate of deposit appears among their liabilities as deposits. That was the reason and is the reason why a great many banks in borrowing money on a certificate of deposit, secured by collateral, rather than to borrow on their own note or on bills receivable. In that way nothing appears in their public statement showing that they are borrowing banks.

132 Q. 12. Was it not understood that the banks had no power to give notes except regular notes for circulation?

Objected to as incompetent and irrelevant.

A. Never.

Q. 13. You never understood anything of that kind?

A. Not under our laws.

Q. 14. Under any laws?

A. The question has been mooted but never—it was settled by decision in the United States court—I think it was in a Baltimore case, by Judge Bond, that banks had a right to give notes. Since then the borrowing has been almost altogether either on bills receivable, certificates of deposit or notes of the bank. Prior to that time, under our State law, there was some question whether banks had the right to give notes other than circulating notes under our State law, from which the United States law was taken.

Q. 15. Did you not know the Comptroller of the Currency had given some intimation of that kind, that they could not give notes except for circulating purposes?

Objected to as incompetent and irrelevant.

A. I know positively from the statement of an ex-Comptroller of the Currency that the question was decided when he was comptroller, and under his direction, that they had a right to give notes.

Q. 16. Before that do you not know of it being decided the other way?

A. No, sir.

Q. 17. Which Comptroller of the Currency was that?

A. It was Mr. Cannon.

Q. 18. Did your bank prefer certificates of deposit to represent the indebtedness to a promissory note of the bank?

A. I don't know that it did. I don't know that we had any special preference in regard to it.

Q. 19. Have you any recollection of your bank ever taking the note of a borrowing bank?

A. Lots of times.

Q. 20. Can you give an instance?

A. I presume I could refer to the books and give a thousand. We prefer that rather than discounting bills receivable.

Q. 21. When I say note of the bank I do not mean a certificate of deposit.

A. I understand you.

Q. 22. But a note of the bank to represent the amount?

A. Yes. What is the question?

Q. 23. Did your bank, in any case, take such a note from the borrowing bank?

133 A. Probably thousands of times.

Q. 24. State whether in any of these cases of the loans you made them the collateral security was equal to or above the amount loaned.

A. The usual custom was to have the collaterals more than the amount of the liability. I presume we have taken notes of banks without collateral, and do it now, take the notes without collateral—a good note without collateral.

Q. 25. In the case where a certificate of deposit is taken do you understand that the money had been deposited in the bank as represented by the certificate of deposit?

Objected to as incompetent and irrelevant.

A. We don't understand anything about it. We take it as it appears.

Q. 26. Is it intended as an acknowledgement of indebtedness to your bank when you advance the money?

Same objection.

A. Yes.

Q. 27. You regard the certificate of deposit then as an obligation on the part of the borrowing bank to your bank if you advanced the money?

Same objection.

A. Yes; beyond any question whatever.

Q. 28. And it is only in that light you look upon it when you advance the money, as the obligations of the bank?

Same objection.

A. We look upon it as a clear, specific and unquestionable obligation of the bank authorized by its custom of doing business.

Q. 29. Were you president of the Chemical national bank at the

time at which the loan was made to the Fidelity national bank, which is in controversy in this case?

A. I was.

Q. 30. Did you participate in the making of that loan?

A. I did.

Q. 31. Who of the officers or officials of the Chemical national bank were instrumental in the making of that loan or joined in the making of that loan to the Fidelity national bank?

A. It was directed, as loans usually are, to the cashier, and he laid it before me and I decided on the loan.

Q. 32. Any other officers of the bank?

A. No, sir.

Q. 33. Then it was a loan made by you and Mr. Quinlan together, as the cashier and president of the Chemical national bank?

A. Yes, sir.

134 Redirect examination:

Q. 1. Was it within the scope of the duties of yourself, as president, and Mr. Quinlan, as cashier, to make loans to borrowing banks?

A. Entirely so.

Q. 2. You have stated on cross-examination that you had no experience as to borrowing banks. I would like to know what you meant by that?

A. No experience in borrowing ourselves.

Q. 3. You mean the banks you were connected with had not been borrowers?

A. Yes.

Q. 4. But you had experience in loaning money to other banks?

A. Yes.

Q. 5. You had had experience with the other end of the line?

A. Yes.

DUMONT CLARKE, of lawful age, being by me first duly cautioned and sworn as a witness on behalf of the plaintiff, deposes and says as follows:

By Mr. WORTHINGTON:

Q. 1. Are you connected with any of the banks in this city.

A. I am president of the American Exchange.

Q. 2. The American Exchange is a national bank, is it not?

A. Yes, sir.

Q. 3. How long have you held that position?

A. About two years as president.

Q. 4. Prior to that time were you connected with any of the other banks?

A. I was vice-president of the same bank.

Q. 5. How many years altogether have you been with the American Exchange national bank?

A. Thirty-three or thirty-four.

Q. 6. Have you ever been cashier of the bank?

A. Assistant cashier for a number of years, and then cashier.

Q. 7. Altogether how long have you been one of the executive officers of the bank, and by executive officers I mean to include president, vice-president, cashier and assistant cashier?

A. Since 1868.

Q. 8. Prior to the decision of the Western National Bank
135 against Armstrong, by the Supreme Court of the United States in the spring of '94—if I recollect right—was it, or was it not, a usual thing for a bank to borrow money?

A. Yes, sir; very common occurrence.

Q. 9. Who acted for the borrowing bank in such a case?

A. At times the cashier, and at times the president, either one of the officers.

Q. 10. Did the lending bank prior to that decision ever require proof of the authority of the officers of the borrowing bank in the shape of a resolution by the directors authorizing the loan?

A. No, sir; we never required anything like that.

Cross-examined by Mr. HERRON:

Q. 1. In what shape was this borrowing made?

A. Usually in the light of rediscounting the bills receivable; at times, however, collateral was furnished to us.

Q. 2 What evidence of such indebtedness was it usual to take?

A. Simply the paper which they had discounted with the endorsement of the bank upon its back; at other times we would take a collateral note made by the bank; at other times a certificate of deposit made by the bank—in the last two cases collateral would be attached to such instruments.

Q. 3. In all such cases did you require collateral where you took the note of the bank or a certificate of deposit?

A. Generally; almost all cases. I would not like to say we made any exception.

Q. 4 What was the custom?

A. The custom was to require collaterals.

Q. 5. For the full amount of the loan or a greater amount?

A. Depending upon the estimate in which we held the bank. Usually we were not particular about it if it covered the note.

Q. 6. What was the reason for taking certificates of deposit instead of the note of the bank?

A. That was merely a choice for the borrowing bank; sometimes they borrowed in that way.

Q. 7. Which was the most common, the transaction of taking a note or rediscounting paper?

A. Rediscounting the straight paper.

Q. 8. And which was the more common, to take certificates of deposit or note of the bank?

A. Note of the bank was more usual than certificates of deposit.

Q. 9. That is your custom?

136 A. Yes, sir.

Q. 10. Have you any knowledge of it outside of the custom of your own bank?

A. No, sir; except in conversation with other bankers we found that was about their own custom and their own rule.

Q. 11. Which?

A. To do just as we did.

Q. 12. Take certificates of deposit or notes?

A. In each way, at the option generally, of the borrowing bank if their account was of sufficient value to allow the option.

Q. 13. Have you had any experience in borrowing from other banks?

A. No, sir.

Q. 14. Either in case of your own bank or other banks borrowing from other banks except where you yourself have made the loan?

A. Not absolutely; of course, in conversations with other bank officers which would naturally take place with associates of that kind we were satisfied they were following about the course which we were following.

ALONZO BARTON HEPBURN, of lawful age, being by me first duly cautioned and sworn as a witness in behalf of the plaintiff, deposes and says as follows:

By Mr. WORTHINGTON:

Q. 1. Are you connected with any of the national banks in New York city?

A. I am president of the Third national bank.

Q. 2. How long have you held that office?

A. About two years and a half.

Q. 3. Prior to that time had you anything to do with the banking business?

A. Immediately prior to that time I was Comptroller of the Currency at Washington. I resigned that position to accept the presidency of this bank.

Q. 4. Before you became comptroller had you any connection with the banking business?

A. Yes; from 1880 to 1884 I was superintendent of the bank department of the State of New York.

Q. 5. Were you ever bank examiner?

A. Yes; I was national bank examiner in the city of New York for something over three years—prior to 1890. I went in with the Harrison administration. I was bank examiner for nearly three years at that time.

Q. 6. Between the time you were State superintendent—I think you said that ceased in 1884?

137 A. I think it was in May or June, 1884.

Q. 7. From that time up to President Harrison's administration were you connected with the banking business?

A. Not at all. Do you mean in an official capacity?

Q. 8. No; I mean in any capacity?

A. No; I was not.

Q. 9. Do you know whether or not it was a usual thing for banks to borrow money from other banks prior to the decision by the Supreme Court of the United States in the spring of 1894 in the case of The Western National Bank against Armstrong?

A. I do; it was usual.

Q. 10. Who acted for the borrowing bank in such transactions?

A. Either of the executive officers; cashier or president.

Q. 11. How about the vice-president?

A. Or vice-president or assistant cashier. Any of the executive officers.

Q. 12. What proof, if any, did the lending bank require as to the authority of the officers of the borrowing bank to make application for the loan?

A. Genuineness of the signature to the application, as well as the correspondence, and they protected themselves by passing the money to the credit of the borrowing bank upon the books of the lending bank, so that it could only be drawn out by the checks of the officers in the regular course of business.

Q. 13. Prior to that decision did the lending bank ever require the passage of resolutions by the board of directors of the borrowing bank directing the making of the loan and authorizing it?

A. I never knew of such an instance. It was not a usual thing at all.

Q. 14. Was or was not the borrowing of money one of the matters that fell within the ordinary scope of the duties of the cashier and vice-president of the bank?

A. It was.

Mr. HERRON: The attorney for the defendant objects to all the foregoing testimony as incompetent and irrelevant.

Cross-examined by Mr. HERRON:

Q. 1. In your personal experience, what shape did the borrowing of this money practically take?

A. Loans were made upon a note—a collateral note, either time or demand, with the bills receivable of the borrowing bank
138 as collateral, with the usual margin of twenty or twenty-five per cent.; also by discounting the receivables of the bank direct by placing the endorsement of the borrowing bank upon the same and having the proceeds passed to their credit at the agreed rate of discount. Money was frequently borrowed also upon certificates of deposit upon a bank with the receivables of the bank put up as collateral for it. That was one of the forms of borrowing which was open to more or less criticism and was made a subject of criticism by myself as supervising officer.

Q. 2. Supervising officer of what; of the State Department?

A. Yes; and also as Comptroller of Currency and examiner. The objection to borrowing upon a certificate of deposit was that the banks borrowing money frequently reported the proceeds of their

loans as deposits instead of bills payable, which, instead of evidencing their weakness by reporting bills payable, they advertised the public confidence in them by increasing the amount of their deposits.

Q. 3. Did they in all such cases require bills receivable or collateral of some kind to secure the loan?

A. Anything was accepted as collateral, such as stocks, bonds, warehouse receipts for grain—anything that the bank was disposed to accept as satisfactory collateral.

Q. 4. But some of the collaterals of this kind were always sent with the evidence of the loan?

A. No; we frequently loaned other banks upon their single name paper without any collateral, and do now. We often loan money without any collateral whatever.

Q. 5. What was the custom?

A. The custom was to require collateral, and it was about equally divided between straight rediscounts and collateral notes.

Q. 6. In these collateral notes you include certificates of deposit?

A. Yes; if taken in that form.

The further taking of depositions under the annexed notice was, by consent, adjourned to tomorrow, the 25th, at 10 a. m.

139 NEW YORK, *October* 25, 1895.

Pursuant to adjournment, parties met.

Present, same as before.

THADDEUS FIRTH, of lawful age, being by me first duly cautioned and sworn as a witness on behalf of the plaintiff, deposes and says, as follows:

By Mr. WORTHINGTON:

Q. 1. Are you connected in any way with the Chemical national bank at the present time?

A. No, sir.

Q. 2. Were you in its employ in the year 1887?

A. I was.

Q. 3. Did you have anything to do with the accounts between the Chemical national bank and the Fidelity National Bank of Cincinnati?

A. Yes, sir.

Q. 4. What?

A. I had charge of reconciling exceptions in the account and the different ledgers under my supervision.

Q. 5. Tell us in what way, what was the practice with reference to reconciling the accounts of the two banks—the course the business took?

A. We furnished the Fidelity national bank a statement from time to time, and if there were any items that did not agree with their books, they wrote us for information; that is, we received a request from time to time for information on certain items which would be a better explanation of it, perhaps.

Q. 6. And you made answers to those requests how?

A. By reporting.

Q. 7. What I want to get at is whether you kept here the letter the Fidelity national bank wrote you, and wrote back to them upon an independent sheet, or whether the correspondence took any other course than that?

A. There was no fixed rule; but in the usual course we frequently returned letters with the information required connected on the same sheet with the request.

Q. 8. Look at the letter which I now hand you, being one offered in evidence in this case, from W. B. McCauslen, a witness, and marked "Letter as to reconcilement of April account." The letter bearing date Cincinnati, 5–12–'87, meaning May 12, 1887, addressed to W. J. Quinlan, cashier, and state whether that is one of the letters to which you have referred?

140 A. Yes, sir.

Q. 9. Is any part of the writing upon those two sheets of paper composing that letter, yours?

A. Yes, sir.

Q. 10. What part?

A. The reply on the second sheet is in my writing.

Q. 11. Beginning with what date?

A. Dated May 19, 1887.

Q. 12. How about any of the explanatory notes on the right-hand side of the first sheet?

A. Those are also in my handwriting.

Q. 13. And the explanatory part on the right-hand side of the top of the second sheet?

A. Those also appear to be in my handwriting.

Q. 14. I hand you another document that has already been offered in evidence by Mr. McCauslen as a witness, marked "Letters as to difference in May reconcilement," to which is pinned, as it now appears, a statement prepared by the Fidelity national bank, called "Reconcilement sheet for May," which has been offered in evidence. The letter itself is without any specific date; it is headed "Chemical national bank, New York; May reconcilement in account with Fidelity national bank." I will ask you whether the letter is one of the series of letters to which you have heretofore referred, and whether, when that letter came to you, the May reconcilement sheet that is attached now to the letter, was with it?

A. I can't say from recollection whether it was attached or not; but my recollection is that they never sent on a full reconcilement sheet—or I might add in addition it was not their course, from my recollection, to send on a sheet.

Q. 15. The other branch of my question was whether the letter itself is one of those letters relating to the reconcilement of accounts?

A. It is.

Q. 16. Please indicate what part of the letter as it now appears, or the writing upon the sheet, is yours?

A. The pencil memorandums on the right-hand side appear to be

in my handwriting, and the ink memorandum at the bottom of the sheet, with the exception of this endorsement on the last line.

Q. 17. The descriptive endorsement, you mean, "Letter as to difference, etc."?

A. Yes, sir.

Q. 18. When you say on the left-hand side, the ink at the bottom, do you mean that part below the signature "Hicks" down to the words "Credit June 2nd, 1887"?

141 A. Yes, and this on the right side.

Q. 19. On the upper part of the right-hand side of the sheet there are a series of numbers, 1, 2, 3, 4, 5, 6, 7 and 8, put there for reference apparently in comparison with the notations, and down below with a cross-checker-board mark on top of it. *And* those numbers on the upper part of the sheet in your handwriting?

A. They appear to be.

Q. 20. I hand you a letter which has been introduced in evidence in this case upon the letter-head of the Chemical national bank, bearing date May 11th, 1887, and marked and offered in evidence "Letter from Quinlan to M. I. Baldwin, May 11, 1887, E. B. R., special examiner," and ask you if you know in whose handwriting that letter is?

A. It is my handwriting.

Q. 21. Also another letter upon the same style of letter-head heretofore offered in evidence and marked "Letter from Quinlan to Baldwin, May 18th, 1887," that being the date of the letter, and ask you in whose handwriting, if you know, that is?

A. That is my handwriting.

Q. 22. Were you, at the time those letters were written, in the employ of the Chemical national bank?

A. Yes, sir.

Q. 23. I hand you another paper that has been offered in evidence in this case, being upon the letter-head of David Armstrong, receiver of the Fidelity national bank, bearing date Cincinnati, July 12, 1887, and marked and offered in evidence "Armstrong letter to Chemical national bank, July 12, 1887," and ask you if that is one of the letters relating to differences in the accounts to which you have testified?

A. Yes, sir.

Q. 24. Are there any things in the letter which are in your handwriting?

A. The pencil memoranda appear to be in my handwriting.

Q. 25. On each of these papers which I have handed you, which relate to the reconcilement of accounts, there is a stamp, which says, "Please report by number or date of letter." Have you any recollection as to whose stamp that was, whether of the Fidelity national bank or the Chemical national bank?

A. My recollection is it was not our stamp; I don't think we had at that time anything like that.

Q. 26. Then, on this letter, which I hand you, dated May

142 12th, 1887, there is another stamp, "Does this belong to us." Do you know anything about whose stamp that was?

A. I think that was not a Chemical stamp.

Q. 27. Have you any recollection independent of papers or documents as to whether the Chemical national bank received any letter from the Fidelity national bank with reference to differences between them in account currents, for the business of March, 1887?

A. No, sir; I could not recall any particular month.

Q. 28. I hand you now a paper which has already been offered in evidence, when Mr. McCaul-en was on the stand, marked "Reconcilement sheet of Chemical national bank, March 18th, 1887," purporting to be a statement made out in the Fidelity national bank of the differences between the accounts as kept in the Fidelity national bank, and as furnished the Fidelity national bank by the Chemical national bank, as they stood at the time the account for March was furnished by the Chemical national bank, and ask you whether, on looking on that sheet, it would refresh your memory—anything there as to whether the Chemical did receive any letter relating to these differences or any of them?

A. Nothing in here that will enable me to recollect definitely.

Q. 29. Is there anything upon the reconcilement sheet that I have just handed you to indicate whether or not it had ever been sent by the Fidelity national bank to the Chemical bank—the sheet itself?

Objected to as irrelevant and incompetent.

A. Not an indicatiou here that I can see of its ever having reached the Chemical national bank.

Q. 30. I hand you another paper that has been offered in evidence, when Mr. McCaulsen was on the stand, and which is marked "Attempted reconcilement of June account, E. B. R., special examiner," and ask you if there is anything on that paper to indicate that it has ever been in the possession of the Chemical national bank?

A. I don't trace any markings here to show that that reached the Chemical national bank.

Q. 31. When did you leave the employ of the Chemical national bank?

A. June, 1889.

Cross-examined by Mr. HERRON:

Q. 1. Have you any present recollection as to the matters of the reconcilement of accounts between the Fidelity national bank and the Chemical national bank, in March, April or May, 1887?

143 A. Nothing special.

Q. 2. Have you any recollection at all?

A. No, sir.

Q. 3. Have you any personal recollection as to the custom of the Fidelity national bank in this matter, at all?

A. I have.

Q. 4. State now what do you recollect?

A. I recollect that they wrote on occasionally for a report on items to reconcile their account.

Q. 5. Was it referred to you?

A. That was referred to me.

Q. 6. And you examined them?

A. I examined and secured the information as far as possible.

Q. 7. Do you remember when that was?

A. I don't remember the particular date, no, sir.

Q. 8. Was it your custom to attend to the reconcilement of accounts of the Chemical national bank against other banks?

A. Yes, sir.

Q. 9. What was the course you took in reconciling the accounts when another bank rendered you a statement of their account?

A. When other banks rendered a statement of their account, I checked off the items and traced those that agreed with our books, and then brought up the exceptions making proof as between their balance and our balance.

Q. 10. What was your mode in checking? Did you do the work yourself, or did you have some person to help you?

A. I did it myself part of the time, and also had an assistant.

Q. 11. When you had assistance, in what way would that be done?

A. My recollection is that one would call off and the other would check; for instance, one to check off from the account received and the other would check on the ledger; check all the items that agreed and that the others would be brought up as exceptions for tracing.

Q. 12. What would the one who had the ledger call off?

Objected to, as it assumes he was the one that called.

Q. 13. Would he call anything more than the item of figures in the column of charges or credits?

A. Not unless it was necessary. If the figures agreed in the ordinary chronological order, why, there was nothing more required.

144 Q. 14. Then either one or the other would call off the figures in the column, and the other, if it corresponded, would check?

A. Yes, sir.

Q. 16. Is that the customary way of reconciling accounts between banks?

A. I believe it is; of course I know nothing outside of the Chemical and the ordinary reports that came in to confirm that course.

Q. 17. So that your impression is that that is the custom which existed in reconciling accounts between banks?

A. Yes. As far as calling off is concerned, that I don't know; but as far as reconciling and getting proof of it, that I believe to be the course.

Redirect examination:

Q. 1. Mr. Herron, in his questions to you, has asked you whether the clerk who had the ledger of the bank to whom the account was furnished, was the one who did the calling off?

A. There was no rule. It was a matter of convenience, and in many cases there was no calling off. It was simply one person checked off. I checked off a large number of them personally without aid.

Q. 2. You understand, of course, that the question that was put to you by Mr. Herron was not the case of the Chemical national bank rendering accounts to another bank as you did with the Fidelity, but the reverse?

A. Yes. Accounts received by the Chemical bank from other banks.

Q. 3. I understand also that you are not speaking as to the practice pursued in other banks, but the course pursued in the Chemical?

A. Yes, in the Chemical.

Q. 4. As to calling off?

A. Yes. sir.

Q. 5. Only you know generally that the banks do check off the accounts when they receive them to make sure they are reconciled?

A. Yes; the fact of receiving in some cases of perfect proof reconcilement.

Q. 6. By proof reconcilement you mean such a one as these long sheets we have handed you here today?

A. Yes; only some are shorter and quite brief; where there are few exceptions it requires very short proof.

Q. 7. That depends upon the number of differences in the account?

A. Yes; showing their balance and our balance and
145 the difference would make a complete proof.

Q. 8. Supposing in checking off, or, rather, supposing in these accounts it would appear that there was not merely a difference in the item in the account, I mean to say in dollars and cents, but there was a difference in the written part of the item, instead of being cash, for example. It might be cash in one place, for example, and something else, bills receivable, or something of the sort, upon the other; what I want to get at is, would you, in checking it off—would you be content in simply calling the numbers, or would the item itself be read?

A. The amount would follow in order without there was some special feature to call attention to it, and that would cover all the reconcilement.

Q. 9. What would you call a special feature to require attention?

A. If there was a wrong memorandum that did not seem to be in accordance with the facts; for instance there might be one hundred dollars credit under the name of Smith, or we had it Rogers; we would look that up because it might conflict with some other item.

Q. 10. How would you find out if the written part of the account conflicted with the ledger—what would you do?

A. The ledger shows merely the money, simply the amount, but the amount was taken from the cash book or credit book, and we could refer to that and then further to perhaps the collection ledgers and probably to other books and trace it.

Q. 11. How would the two persons who were checking reach the conclusion that there was something to be looked up; that there was a discrepancy there?

A. Nothing more than observing.

Q. 12. Would they both look at the account?

A. Not to look; no.

Q. 13. I am putting the case in carrying the account down you find the amount was $3,000 charged up by one bank on a certain date and entered upon the books in the other bank one, two or three days, as course of mail would require, the amount might agree, but the written explanation of the amount that would be in the books would not ageee, it would be different in the two banks. Now what I want to get at is whether, suppose such a difference did occur, it would be right—if it was brought to the mind of one or the other there would be an attempt to search and find out why that discrepancy occurred?

146 A. No; not in the calling off; that would be in the final reconciling; we usually glanced over the sheet, and if anything catches our eye it would be shown in that way so that there was no certainty one way or the other.

Q. 14. Then the calling off was not the whole business of reconciling?

A. No; that was simply getting it into shape for the final closing.

Q. 15. Whose business was it in the case of the Chemical national bank to attend to that?

A. I usually made the final proof.

Q. 16. What did you do with reference to that in making a final proof; what is the business or duty of the man who has the final proof to do in such cases?

A. He has to reconcile the items that were brought up as exceptions, and those he cannot do at once he has to secure information of and trace later.

Q. 17. You mean he is supposed to have such general familiarity with the business of the bank that on looking over the account he would see if there was anything there that should strike attention?

Objected to as incompetent and irrelevant.

(Not answered.)

Q. 18. What I wish to know is whether the person who has charge of the reconcilement of the accounts pays attention to anything upon the account that is furnished him except the figures; when I say whether the person does do so I mean to say whether it is the proper performance of his duty to look at anything except the figures?

Objected to as incompetent and irrelevant.

A. In making an examination of a statement received a person cannot very well check the figures without seeing something of the balance of the statement, and I always consider that it is the proper

course to note anything that would indicate a difference between the account received and the account at the bank.

Answer objected to.

Q. 19. What would suggest itself to the mind of the person having charge of the reconciling of accounts beyond the looking it over as indicating that there might be a difference between the account received and the account of the bank aside from the matter of figures?

Objected to as incompetent and irrelevant.

A. There are so many possibilities that one could hardly tell what it would be. I might suggest a case where there was some long explanation that we received, and in which there was a different date in the statement, which would naturally call your attention to it and you would trace it to see whether your records agreed with their statement.

147 Recross-examination:

Q. 1. In the question I asked before, as to where there are two persons engaged in reconciling the account whichever one called out, whether from the account of the other bank or from the ledger in your bank, he would call out the figures simply, from the one who was calling off, would he not? I mean the figures in the column of amounts.

A. That would be the usual course in checking from the ledger, but we had some statements that included collection notes, and in those cases they would cover only the name of the maker.

Q. 2. That is, if a piece of paper was put down as collected for one person, when, according to your books, it was collected by another person, then you would note that difference?

A. I would be apt to consider it.

Q. 3. If the figures in the two accounts agreed they would be checked off, would they not, and there was no such difference as you have suggested, then you would check them?

A. If they ran in order and agreed as to amount; the inference would be that they agreed and it would be checked.

Q. 4. In coming to the final proof of reconcilement you would not take into consideration again the items which had been checked?

A. No, sir.

Redirect examination:

Q. 1. What do you mean by that, that you would not take into consideration items which had been checked?

A. The items checked had agreed between their account and our ledger, and there was no necessity for bringing them up as any exception or difference; the one offset the other; it was like a cancellation.

Q. 2. Supposing that in going over for the final reconcilement

after the checking you came across one of those instances to which you alluded before, and on both the figures agreed, and there was something upon the other part of the account to strike your attention as probably not what appeared upon your books you understood it was, that in such a case as that, that the matter would rest with the checking without any further examination?

A. No; if there was anything that called my attention or did not seem to be in order and correct, I would trace it up and verify it, and if I could not verify it by our books I would write for information.

148 Q. 3. Did you ever have a case in which accounts were rendered to you where the bank rendering the account charged your bank with a loan, and your books did not show any such loan?

A. In the accounts rendered to us?

Q. 4. Yes.

A. No, sir; I have no recollection.

Recross-examination:

Q. 1. If you found such a matter of that kind, the account of a loan to the Chemical national bank, and your books did not show such a loan, you would regard it as your duty to go to the board of directors, would you not?

A. I think I should have mentioned the matter to the cashier at once.

Redirect examination:

Q. 1. Why do you say you would mention it to the cashier?

A. The cashier is considered the business head of the office, and if he was present I should have it referred at once to him; if he was not present, the president would have been the course.

Q. 2. The cashier in the ordinary course is the channel of communication between subordinate clerks and the board of directors, is he not?

Objected to.

(Not answered.)

Q. 3. Do I understand, then, that the cashier is the ordinary channel of communication between the subordinate clerks and the officers of the bank?

A. The cashier is an officer of the bank.

Q. 4. But the cashier is the person to whom the subordinate clerks report in the ordinary course of business?

A. Yes, sir.

Recross-examination:

Q. 1. And if you made a statement to the cashier or president, then it might be you considered that your duty then ended?

A. Yes, sir.

EDWARD TOWNSEND, of lawful age, being by me first duly cautioned and sworn as a witness on behalf of the plaintiff, deposes and says as follows:

By Mr. WORTHINGTON:

Q. 1. Are you connected in business with any of the national banks of this city?

149 A. Yes, sir; with the Importers' & Traders'.

Q. 2. What position do you hold?

A. Cashier.

Q. 3. How long have you held that position?

A. Over fifteen years.

Q. 4. Do you know whether or not prior to the decision of the Supreme Court of the United States in the case of The Western National Bank against Armstrong, in the spring of 1894, it was usual for a bank to borrow money?

A. It was.

Q. 5. Who acted for the borrowing bank whenever it desired to borrow money?

A. Any official whose signature was authorized with us.

Q. 6. And what officials was it customary to give authorization to for signature?

A. Generally the president and cashier, and frequently the vice-president and assistant cashier, also.

Q. 7. Did the lending bank prior to that decision ever require proof of authorization to make the loan in the form of a resolution of the board of directors of the borrowing bank?

A. Never to my knowledge.

Q. 8. What forms did such loans usually take; I mean what evidence of indebtedness?

A. Generally they were the endorsement of the bank by one of its officers, with notes and rediscount of their bills.

Q. 9. You mean rediscount of paper made for the occasion?

A. Usually it was rediscounted; at times it was the other way with paper and collateral.

Q. 10. And certificates of deposit?

A. Oh, occasionally but not often.

Cross-examined by Mr. HERRON:

Q. 1. In all such cases you required collaterals, did you?

A. Not all.

Q. 2. Where it was not rediscounted paper?

A. Generally; there may have been some exception.

Q. 3. What has been the custom since the decision of the Supreme Court?

A. No change, so far as we are concerned.

Q. 4. You did not make any change at all?

A. No, sir.

Q. 5. The Supreme Court decision has not affected you a particle?

A. Not at all.

150 GEORGE F. BAKER, of lawful age, being by me first duly cautioned and sworn as a witness on behalf of the plaintiff, deposes and says as follows:

By Mr. WORTHINGTON:

Q. 1. You are the president of the First national bank of this city?

A. I am.

Q. 2. How long have you been connected with that bank?

A. Over 30 years.

Q. 3. And in what position?

A. Teller, cashier and president.

Q. 4. Do you know whether or not prior to the decision of the Supreme Court of the United States in the case of The Western National Bank against Armstrong, decided about a year ago last spring, it was a usual thing for a bank to borrow money from its correspondent bank?

A. Yes.

Q. 5. Who acted for the borrowing bank when a loan was to be made?

A. Any of its officers.

Q. 6. When you say any of its officers, whom do you class as officers?

A. Generally the president or cashier, and occasionally a director.

Q. 7. How about the vice-president?

A. The vice-president; yes, sir.

Q. 8. In such cases did the lending bank require the proof of authority of the officer of the borrowing bank making application for the loan in the form of a resolution of the board of directors authorizing the making of the loan?

A. No, sir.

Q. 9. Your bank itself has had some litigation with Armstrong, the receiver of the Fidelity national bank, has it not?

A. Yes, sir.

Q. 10. Is the litigation over now or not?

A. I don't know.

Cross-examination by Mr. HERRON:

Q. 1. You made two or three loans to the Fidelity national bank, I believe, during its existence?

A. I don't remember how many loans we made to them.

Q. 2. For a pretty large amount?

A. Yes, sir.

151 Q. 3. What has been the custom here with banks since the decision of the Supreme Court of the United States?

A. In what regard?

Q. 4. As to requiring resolutions of board of directors?

A. I am only speaking generally of our own bank. We require a resolution.

Q. 5. You require a resolution of the board of directors authorizing an officer to borrow money?
A. Yes, sir.
Q. 6. Do you not know that that is not the general custom in the banks, so far as you know?
A. I think so.

Redirect examination:

Q. 1. The loans which you had made to the Fidelity national bank were the occasion of the litigation that I referred to?
A. Yes, sir.
Q. 2. Did they result in the payment of the whole or any part of those loans to your bank?
A. The loan was paid in whole or in part.
Q. 3. Do you know whether, in the case of your bank, the loans which you made to the Fidelity, there was any resolution of the Fidelity board of directors authorizing the loan?
A. No, sir.

Recross-examination:

Q. 1. What do you mean by "no, sir"?
A. I don't think there was any resolution.
Q. 2. Do you know anything about it at all, whether there was or not a resolution?
A. I don't know of any resolution; no, sir.

FREDERICK D. TAPPAN, of lawful age, being by me first duly cautioned and sworn as a witness, on behalf of the plaintiff, deposes and says as follows:

By Mr. WORTHINGTON:

Q. 1. You are the president of the Gallatin national bank?
A. I am.
Q. 2. How long have you been connected with that bank?
A. 45 years.
Q. 3. In what capacities?
152 A. Officer for 38 years and clerk for 7 years.
Q. 4. Prior to your being president, what other offices did you hold?
A. In the bank?
Q. 5. Yes.
A. I was cashier.
Q. 6. How long have you been president?
A. I've been president 27 years.
Q. 7. Do you know whether or not, prior to the decision of the Supreme Court of the United States in the case of The Western National Bank against Armstrong, which was decided about the spring of 1894, it was the usual thing for one bank to borrow money from another bank with whom it had correspondence?
A. Oh, yes.

Q. 8. In the making of such loan, who acted for the borrowing bank?

A. Either the cashier or president.

Q. 9. How about the vice-president?

A. The vice-president, in the absence of the president. In some cases the vice-president is the more active man; not usually, but there have been cases where the vice-president has been the more active man of the two.

Q. 10. And in such cases he would be the person naturally to act?

A. Yes, sir.

Q. 11. In making such loans, did the loaning bank require proof of the authority of the officer of the borrowing bank making the application, by a resolution of the board of directors, prior to this decision of which I have spoken?

A. I think not.

Q. 12. When you say you think not, how positive is your information upon this point?

A. That they never have required a resolution of the board of directors of the borrowing bank.

Q. 13. How were the loans ordinarily evidenced?

A. By note usually, or by a note with securities attached.

Q. 14. How about certificates of deposit of the borrowing bank?

A. And occasionally—I don't know how frequently that has been done. We have done it ourselves by loaning on a certificate of deposit of the bank.

Cross-examined by Mr. HERRON:

Q. 1. To whose order would that certificate of deposit be drawn?

153 A. It would be drawn to the order of the lending bank.

Q. 2. Have you changed your rule on the subject of lending money to other banks since the decision of the Supreme Court?

A. No, sir.

Q. 3. You do not even now require any authority from the board of directors?

A. No, sir.

Q. 4. Notwithstanding the decision of the Supreme Court?

A. No, sir.

Q. 5. In all such cases you require collateral, do you?

A. No, not always. It depends entirely upon the credit of the bank or the institution's desire to make the loan or to borrow the money.

Q. 6. In the majority of cases, is or not that required?

A. I can only speak with reference to my own bank. In the majority of cases with us, the borrowing bank usually rediscounts paper or puts up some security with the bank.

Q. 7. Are not these loans generally in the way of rediscounting paper?

A. I should think they were; they are with us.

Redirect examination:

Q. 1. You say that since the decision to which I have referred, the bank has not changed its practice in the matter of requiring a resolution of the board of directors?

A. Yes.

Q. 2. Did the bank take legal advice upon the question?

A. No, sir.

THE STATE OF NEW YORK, *New York City and County,* } ss:

I, Julius W. Rotchild, a notary public in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named Wm. J. Quinlan, Jr., George G. Williams, Dumont Clarke, Alonzo Barton Hepburn, Thaddeus Firth, Edward Townsand, Geo. F. Baker and Fred D. Tappan, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions hereunto being annexed (subscription being waived) as above set forth, were taken in shorthand and a transcript of such shorthand testimony was written out by typewriter under my direction; and were continued from day to day, as above set forth, that said depositions were duly taken by me pursuant to and at the time and place and within the
154 hours specified in the notice hereto attached, and that I am not counsel, attorney or relative of either party or otherwise interested in the event of this suit.

I further certify that all of said witnesses live more than 100 miles from place of trial; and *was* at the time of so taking the said depositions.

In testimony whereof I have hereunto set my hand and official seal, this first day of November, A. D. 1895.

[SEAL.] J. W. ROTCHILD,
Notary Public, 79, City and County of New York.

Cost Bill.

Total cost of taking depositions—stenographer and notary, $110.00.

And afterwards, to wit, on the 1st day of June, A. D. 1896, the following testimony was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Testimony.

THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } ss:

The President of the United States of America to Effie V. Ryan, Cincinnati, Ohio, Greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you special examiner, and by these presents to give

you full power and authority diligently to examine upon his (or their respective) corporal oath (or affirmation), before you to be taken, sundry persons as witnesses on the part of the parties in a certain cause now pending undetermined in the circuit court of the United States of America, for the western division of the southern district of Ohio, in the sixth circuit, wherein The Chemical National Bank of New York is complainant, and David Armstrong, as receiver of the Fidelity national bank, is respondent, touching the premises (or if interrogatories are annexed, on the interrogatories hereunto annexed).

And we do further empower you to examine on the same behalf and in like manner, any other person or persons who may be produced as witnesses before you.

155 And we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to Benjamin R. Cowen, clerk of the circuit court of the United Stated, southern district of Ohio, western division, Cincinnati, Ohio; and that you return the same when executed as above directed, annexed to this writ, with the title of the cause indorsed on the envelope of the commission, into the said circuit court, before the judge (or judges) thereof, with all convenient speed.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Cincinnati, in the said division and district, this 17th day of September, A. D. 1895, and in the 120th year of the Independence of the United States of America.

Attest:

[SEAL.]

B. R. COWEN,
Clerk U. S. Circuit Court, S. D. O.,
By ROBERT C. GEORGI,
Deputy Clerk.

In the United States Circuit Court, Southern District of Ohio, W. D.

THE CHEMICAL NATIONAL BANK OF NEW YORK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati. } No. 4339.

Pursuant to the foregoing notice, the following depositions were taken at the offices of David Armstrong, in the Masonic temple; John W. Herron, in the United Bank building; Wm. Worthington, in the Wiggins block, room 310 Government building, and office of Henry Pogue, No. — West Fourth street. All in Cincinnati, Ohio, on the 18th day of September, 1895; on the 19th day of September, 1895; 11th day of November, 1895; the 3rd day of February, 1896; the 10th day of February, 1896; the 4th, 5th and 6th days of May, 1896.

156 The United States Circuit Court, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK OF NEW YORK, Plaintiff,
vs.
DAVID ARMSTRONG, as Receiver of the Fidelity National Bank of Cincinnati, Defendant. } No. 4339.

Testimony on Behalf of Plaintiff,

Taken at the office of David Armstrong, Esq., receiver of the Fidelity national bank, room No. 9, Masonic temple, Third and Walnut streets, Cincinnati, Ohio, on Wednesday morning, September 18th, 1895.

Appearances:
For plaintiff, Hon. William Worthington.
For defendant, Hon. John W. Herron.

WILLIAM BEATTY MCCAUSLEN, called on behalf of plaintiff, being first duly sworn, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. McCauslen, what position, if any, do you hold under the defendant in this case? Mr. Armstrong, the receiver of the Fidelity national bank?

A. I am his book-keeper, and had been in his employ since shortly after the failure of the Fidelity national bank, in June, 1887.

Q. 2. Have you charge, for him, of the books and papers of the Fidelity national bank?

A. Yes, sir; I have.

Q. 3. Mr. McCauslen, will you please produce the book of minutes of the board of directors and stockholders of the Fidelity national bank?

A. Yes, sir; I have it here. (Hands minute book to counsel.)

Counsel for plaintiff offers minute book in evidence, and asks that the minutes shown from the first meeting of the board of directors, held on February 25th, 1886, on page 15 of the book down to, and inclusive of, the minutes of the meeting of May 10, '87, found on pages 43 and 44 of the book, be copied by the
157 special examiner, and attached to this deposition, marked "Exhibit 'Minutes' to W. B. McCauslen's Testimony."

Q. 4. Mr. McCauslen, please examine this book (minute book) and see if there are any minutes in it after those of May 10, 1887, found on pages 43 and 44?

A. (After examining.) No, sir; there appear to be no records made after that date in the minute book.

Q. 5. Now, Mr. McCauslen, will you please produce the reconcilement sheet of the account current between the Fidelity national bank and the Chemical national bank of New York?

A. Yes, I have it in my hand (hands it to counsel).

Paper offered in evidence by counsel for plaintiff, hereto attached and marked "Reconcilement sheet for Chemical national bank, March, 1887, Effie V. Ryan, special ex'r."

Q. 6. Mr. McCauslen, have you, in the course of your duties, acquired such familiarity with the handwriting of the clerks of the Fidelity national bank, as to enable you to state in whose handwriting this reconcilement sheet is?

A. Yes, I believe so. I believe it to be in the handwriting of Edward Hicks.

Q. 7. Is he living or dead?

A. He is now dead.

Q. 8. Can you explain to us what this sheet is, or what it shows?

A. It purports to show the difference existing in the account as rendered to the Fidelity by the Chemical national bank, and the account of the Fidelity for the month of March, 1887.

Mr. HERRON:

Q. The differences between what?

A. Between the two banks.

Judge WORTHINGTON:

Q. 9. Now, let me illustrate it: It begins at the left-hand upper corner with the words, "We charge," and then there are the several entries under that; now, do I understand you to mean that these entries under "We charge" are entries that are charged upon the books of the Fidelity national bank, but are not upon the books of the Chemical national bank, as shown by the account current rendered by the Chemical?

A. Yes, sir.

Q. 10. And so, *per contra*, the items under the words "You
158 charge," are items which appear upon the books of the Chemical national bank, but not upon the books of the Fidelity national bank?

A. Yes, sir; we might say, "You charge, and we do not credit."

Q. 11. And upon the other side, "We credit"—that means we credit and you do not charge?

A. Yes, sir.

Q. 12. And down below that, "You cr.," means you credit and we do not charge?

A. Yes, sir.

Q. 13. What was the usual course of business after the making out of such a reconcilement sheet?

A. I don't know that I could testify competently to that.

Q. 14. I mean so far as you have discovered from your examination of the books and papers?

A. Yes, these were, of course, adjusted; then if there were any differences existing in the account, they were adjusted in the course of business on the books of the two banks.

Q. 15. Was it the custom of the Fidelity national bank to make any report to the Chemical national bank of the reconcilement sheet?

A. Yes, sir; I suppose it was.

Q. 16. Mr. McCauslen, are you able to state from your knowledge by the papers, when that report was made, what was done with that report? The report would, of course, be in writing from the Chemical national bank to the Fidelity national bank in Cincinnati?

A. Yes, I suppose it would be.

Q. 17. Well, don't you know?

A. I know that there are reports in writing covering some months endeavoring to adjust these differences.

Q. 18. Taking the form of a letter from the Fidelity bank to the Chemical?

A. Yes, sir.

Q. 19. And the return of the same letter, with the answer of the Chemical written upon it?

A. Yes, sir; there are such letters here.

Q. 20. Mr. McCauslen, have you made search through the books and papers of the Fidelity national bank, to find such a letter with reference to this March account (reconcilement sheet already offered in evidence)?

A. Yes, sir; I have made such a search.

Q. 21. Thoroughly?

A. Yes, I have made a thorough search for it.

Q. 22. And have you been able to find anything with reference to the March account, except this reconcilement sheet which
159 is now before you?

A. No, sir; I have not.

Q. 23. Mr. McCauslen, the fractional figures that appear in these entries give, I presume, the month, as the numerator, and the day of the month as the denominator (referring to 3–1, etc., in the first column of reconcilement sheet)?

A. Yes, sir; I believe those figures refer to the dates.

Q. 24. Take the first one, for instance, under the head "We charge;" 1–3, 46881, and then carried out, 362; that means, we charge, upon March 1st, and what does the 46881 mean?

A. That refers to the number of the collection.

Q. 25. And then the 362 would be the amount of the collection of the item, would it?

A. Yes, sir.

Q. 26. Then, the next 3–2 means March the second—error?

A. Yes; that means the difference arising from an error—eighty-six (86c.) cents.

Q. 27. And so through the other entries?

A. Yes, sir.

Q. 28. Now, on the inner page, the second page, of this reconcilement sheet, are sundry entries, beginning, on the extreme left-hand column with the figures 3280; and, then, in the column that is ordinarily used for dollars and cents, appears "100," and——

A. Those figures refer to the drafts outstanding at the time the statement was made; the numbers of the drafts and the amounts.

Q. 29. The numbers and amounts of the drafts drawn by the Fidelity national bank on the Chemical national bank, or *vice versa*?

A. Drawn by the Fidelity national bank upon the Chemical national bank.

Q. 30. Mr. McCauslen, have you found a reconcilement sheet for the account for the month of April, 1887?

A. Yes; I have it here in my hand.

Paper offered in evidence by counsel for plaintiff, hereto attached and marked, "Reconcilement sheet for April, 1887; E. V. R., special examiner."

Q. 31. The explanation you have given with reference to the reconcilement sheet for March applies equally to this reconcilement sheet for April, I presume, Mr. McCauslen?

A. Yes, sir; as to form, etc.

Q. 32. Mr. McCauslen, there was pinned to this reconcile-
160 ment sheet for April, as you handed it to me, a letter upon the letter-head of the Fidelity national bank, dated "Cincinnati, 5–12, 1887; addressed to W. J. Quinlan, cas., N. Y.," two sheets; stamped "Fidelity national bank, per Watters," on the second page; and written underneath it, under date of "N. Y., May 19, '87," is an answer signed "W. J. Quinlan, Jr.," with sundry stamps and notations upon the letter, and comments. Is this the letter of advice for the April account that you have spoken of as having been found by you among the papers of the Fidelity national bank?

A. Yes, it is. This appears to be a letter written by the Fidelity to the Chemical national bank, noting differences and omissions, etc., found in reconciling the April account as rendered to the Fidelity national bank by the Chemical national bank.

Letters referred to offered in evidence by counsel for plaintiff, hereto attached, and marked "Letters as to reconcilement of April account, E. V. R., special examiner."

Q. 33. Mr. McCauslen, there is stamped on this letter the words: "Does this belong to us?" Are you able to say whether that is the stamp of the Fidelity national bank, or the stamp of the Chemical national bank—which bank is it?

A. No, sir; I am not able to say that. There are so many of these stamps used by the banks.

Q. 34. As against the line "You cr. 4–6, meaning, April 6th, 168.99." there appears in a different handwriting "5–18, meaning May 18," I presume, "your chg. 4–9 & fees 167.58" and "1.41" beneath it; do you know whether those words "your chg." etc.—are in the handwriting of the clerks of the Fidelity, or of the Chemical national bank?

A. It is in a different handwriting from the Fidelity's letter, and was likely written by the clerk in the Chemical—corresponding with the handwriting at the end.

Q. 35. It is the explanation of the inquiry asked by the Fidelity?

A. Yes, sir.

Q. 36. And so with the other similar entries underneath, written on the right-hand side of the page?

A. Yes, sir.

Q. 37. Mr. McCauslen, have you found the reconcilement sheet for the account current for the month of May, 1887?

A. Yes, sir, here it is.

Paper offered in evidence by counsel for plaintiff, hereto attached, and marked, "Reconcilement sheet for May, E. V. R., special examiner."

161 Q. 38. As you hand this to me, Mr. Causlen, there was pinned to it a part of a sheet of account paper, headed, "Chemical, New York, May reconcilement; in account with the Fidelity National Bank of Cincinnati." I will hand that paper to you, and ask you if that is the letter of advice from the Fidelity national bank, to the Chemical national bank, relating to the May account; similar to the letter of advice you have produced with reference to the April account.

A. Well, I don't believe I could identify that as a letter. While it is true there are notations made on there apparently by the Chemical national bank, or some clerk there, I don't believe I could say that was a letter similar to the other one.

Q. 39. I call your attention to the writing in the body of it, Mr. McCauslen: "Will you kindly see what this difference of 20.00 in our letter of 4–5th. Please return this sheet with your reply, and oblige Fidelity." Who is that signed by?

A. Hicks. That is referring to this item here (indicating), I take it, $20.00; and asking that they explain that item, and see what the difference is.

Q. 40. My question, Mr. McCauslen, is whether you call that a letter, or not—or, whatever, name you give it—is that a statement rendered by the Fidelity national bank to the Chemical national bank, of the differences between the account as kept upon the books of the Fidelity national bank and as rendered by the Chemical national bank for the month of May, 1887, after the comparison by the two—is it such a statement of differences?

A. Yes, sir; it seems to be such a statement.

Q. 41. Returned with the answer or explanation of the Chemical national bank upon it?

A. Yes, sir.

Q. 42. The explanation you have given with reference to the March reconcilement applies, also, to this May one, I presume?

A. Yes, sir; equally as well.

Letter referred to offered in evidence by counsel for plaintiff hereto attached, and marked "Letter as to differences in May reconcilement. E. V. R., special examiner."

Q. 43. Have you the reconcilement sheet for the account current for the month of June, 1887, Mr. Causlen, together with any explanatory letters that may have passed from one bank to the other, with reference to it?

A. Yes, sir; I have it here, together with a statement and some papers for the month of June, made up by the Fidelity national bank.

162 Q. 44. This (indicating), is the reconcilement sheet for the month of June, is it?

A. Yes, sir.

Reconcilement sheet offered in evidence by counsel for plaintiff, hereto attached, and marked "Reconcilement sheet, for June, E. V. R., special examiner."

Q. 45. What is the paper I now hand you, Mr. McCauslen?

A. This has apparently been an attempt to reconcile the account. I don't think it has any bearing upon the matter whatever.

Paper offered in evidence by counsel for plaintiff, hereto attached, and marked "Attempt at reconcilement of June account, E. V. R., special examiner."

Q. 46. What is the paper I now hand you, headed "David Armstrong, receiver of the Fidelity national bank," dated Cincinnati, July 12, '87, Chem. N. Y.?

A. This seems to be a letter to the Chemical national bank by the Fidelity national bank.

Q. 47. By David Armstrong, as receiver, is it not?

A. Yes, sir; so it would be. A letter written by the receiver, setting out differences in the account for the month of June, 1887, as rendered by the Chemical national bank to the receiver of the Fidelity national bank.

Letter offered in evidence by counsel for plaintiff, hereto attached and marked "Armstrong letter to Chemical, July 12th, 1887. E. V. R., special examiner."

Q. 48. Mr. McCauslen, it would appear from the correspondence with reference to the April, May and June accounts, that the reconcilement sheet itself was not sent to the Chemical national bank by the Fidelity national bank, but that an abstract or summary of its statements in so far as they desired information, was sent on. Do you know whether that was the fact—in the course of the business?

A. It would seem from the correspondence now in existence that it was, yes.

Q. 49. I understand you to say, Mr. McCauslen, that you have not been able to find any such letter of explanation with reference to the March account, although you have made diligent search?

A. Yes, sir.

Q. 50. Look at the document I now hand you, Mr. McCauslen, and state whether that is also produced by you from the files of the Fidelity national bank?

A. Yes, sir; it is.

163 Paper offered in evidence by counsel for plaintiff, hereto attached and marked "Letter from W. J. Quinlan, cashier, to Ammi Baldwin, May 11, 1887. E. V. R., sp. ex."

Q. 51. Look at the document I now hand you, and state the same in regard to it, please.

A. Yes, sir; this also I took from the files of the Fidelity national

bank; it is a letter from W. J. Quinlan, Jr., to Ammi Baldwin, cashier, dated May 18, 1887.

Letter offered in evidence by counsel for plaintiff, hereto attached and marked "Letter from Quinlan to Baldwin, May 18, 1887. E. V. R., special examiner."

Q. 52. Look, also, at the document I now hand you, and state what it is?

A. This is also a letter; it is from the Chemical national bank, to Edward Armstrong, receiver of the Fidelity national bank, dated July 6, 1887.

Letter offered in evidence by counsel for plaintiff, hereto attached and marked "Letter from Quinlan to Armstrong, July 6, 1887. E. V. R., special examiner."

Q. 53. Mr. McCauslen, will you look at the reconcilement sheets for April, May and June, and state in whose handwriting they are?

A. Yes, these are all in the handwriting of—the reconcilement sheets proper—of Mr. Hicks.

Q. 54. When you say "the reconcilement sheets proper," you mean the statements on the first page, and not the detailed list of drafts outstanding, on the inner pages?

A. Yes, sir.

Q. 55. Now, the list of drafts outstanding, in this April account, is in whose handwriting, if you know?

A. I do not know.

Q. 56. In the May reconcilement sheet, as to outstanding drafts, if you know?

A. I do not know.

Q. 57. In the March reconcilement sheet, as to drafts outstanding, if you know?

A. I think it is in the handwriting of Mr. Hicks; yes, it is all in his handwriting.

Q. 58. In the June account, part of it is in figures, and part of it is in lead pencil; the names written in in lead pencil—lo you know as to the handwriting there (indicating on paper)?

A. The lead pencil writing is by McColling, a clerk in the Fidelity. I am not positive about the figures that are in ink; I am not certain about that.

Q. 59. Now, Mr. McCauslen, the letter of explanation
164 dated 5-12, 1887, is in whose handwriting?

A. Mr. Hicks'.

Q. 60. That is, in so far as it came from the Fidelity national bank, of course?

A. Yes, sir.

Q. 61. The explanation of the account for May—the May reconcilement—in whose handwriting is it, so far as it comes from the Fidelity national bank?

A. Mr. Hicks'.

Q. 62. The explanation dated July 12, 1887, in whose handwriting is it?

A. That also was written by Mr. Hicks.

Cross-examination by Mr. HERRON:

Q. 1. What position did Mr. Hicks occupy in the Fidelity national bank.

A. He was an assistant to the general book-keeper, at work upon the general books of the Fidelity—bank accounts.

Q. 2. Who was the general book-keeper?

A. Well, Mr. Watters, I believe, was.

Q. 3. And Mr. Hicks was his assistant?

A. Yes, sir.

Q. 4. He simply had charge of the accounts with banks?

A. Yes, he seemed to have charge of this account kept with the Chemical national bank.

Q. 5. And other banks, too?

A. Yes, sir; other banks as well. No, I will not say that he had charge of that particular bank any more than any of the other banks. It is a fact, that he has made the entries. The account was kept this way, in detail, and Mr. Hicks made the entries for some of the months.

Q. 6. He assisted generally?

A. Yes, sir.

Q. 7. And in the accounts with the different banks that the Fidelity kept accounts with?

A. Yes, sir.

Q. 8. Was the April one in Mr. Hicks' handwriting?

A. Yes, that is written by Hicks.

Mr. HERRON: I should like to look over these papers a little before any further cross-examination of this witness. Oh, one other question, I can ask him now.

Q. 9. Mr. McCauslen, what reason have you for supposing that the reconcilement sheets themselves were not sent to the Chemical national bank and returned to the Fidelity?

165 A. As I remember, it was not the custom of the Fidelity national bank to send the reconcilement sheets to its correspondents.

Q. 10. You think that that was not the custom?

A. I think that was not the custom.

Q. 11. Have you found anything in the correspondence that would indicate that they were not sent?

A. No, sir; I have not.

Q. 12. Have you any knowledge as to what the fact was, in connection with the transactions between the Chemical national bank and the Fidelity national bank?

A. No, sir; I have no actual knowledge (not having been employed in the bank), further than this correspondence shows here, that we have gone over.

Q. 13. Then, your only information is from the correspondence which you have produced here?

A. Yes, sir.

The further cross-examination of this witness in continued until counsel for defendant shall have had an opportunity of examining the exhibits offered in evidence by counsel for plaintiff.

And also M. M. WHITE, called on behalf of plaintiff, having first duly affirmed, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. White, you are the president of the Fourth national bank of this city?

A. Yes.

Q. 2. How long have you held that position?

A. I think fifteen years.

Q. 3. Were you engaged in the banking business prior to that time, Mr. White?

A. As cashier I was.

Q. 4. In the same bank?

A. Yes.

Q. 5. How long, altogether, have you been in that bank, Mr. White?

A. Twenty-one or twenty-two years. I don't recollect which.

Q. 6. Mr. White, can you tell us whether or not, prior to the decision of the Supreme Court of the United States, in the case of The Western National Bank *vs.* Armstrong, receiver of the Fidelity national bank, in the spring of '94, it was considered an unusual or a usual thing for one bank to borrow money from another?

166 Question objected to by counsel for defendant.

A. It was a usual occurrence for them to do so; being regarded as legitimate in the line of banking business.

Q. 7. Tell us what officers of a bank, of a borrowing bank, were treated as having authority to make loans upon its behalf?

Question objected to by counsel for defendant.

A. I can only speak of the Fourth national bank—as to what was our custom. The application is usually made by the president or the cashier, either to borrow money upon rediscounting bills receivable, or, in some instances, to make their paper, pledging bills receivable as collateral—simply the paper made by the officers of the bank—the president or the cashier—which generally was replied to in a satisfactory manner, as, that such paper would be accepted and placed to the credit of the correspondent.

Q. 8. Do you know whether or not, Mr. White, prior to that time, is was usual or customary for the lending bank to demand a resolution of the board of directors of the borrowing bank, as showing the authority of the officer acting in its behalf, in that particular transaction?

A. Not to my knowledge was such a thing ever required, that the board of directors should, by resolution, authorize loans of this kind, prior to this decision of which you speak.

Q. 9. You have spoken with reference to the practice in your own

bank, Mr. White; do you or not, know what was generally considered the scope of the duties of the president and the cashier of other banks, generally?

Question objected to by counsel for defendant.

A. Well, upon the theory that banks in the West (with which we have more communication than with banks situated in the South, the extreme East, or the North), the business was usually managed by the officers of the bank who were given what I might call silent authority ("silent" is not exactly the word I would like to use—but—) to go on and transact the business; many of them being partnership banks, and a few of them being incorporated banks; and quite a number of them national banks——

Q. 10. Well, as to the scope of the authority of cashiers in national banks, in Cincinnati, prior to the year 1894, Mr. White, are you able to state what was considered within and without the scope of their authority?

A. Many years ago, when I was cashier of the bank, it became necessary, according to the opinion of the president of the bank (at that time, Theodore Cook, deceased), that the Fourth national bank should borrow some money; the application was made, and
167 the loan was made; the note was signed by Theodore Cook, president, without any authority of the board of directors. Without turning over the records of the bank, I am inclined to think that thereupon a record was made in the proceedings of the directors' meeting; simply reported, I think, that the records would show, that the transaction was reported to the meeting of directors. I am not sure about that part, but can easily ascertain——

Q. 11. No, Mr. White; my question is not as to particular instances; but whether you, from your knowledge of the banking business, can say whether the cashier of a national bank in Cincinnati was treated by the other banks and persons having to do with him, as having authority to borrow money on behalf of this bank; or whether he was not so treated?

A. In reply to that, so far as my knowledge goes, the question never was raised that his signature conveyed the liability of the bank, as much as it could upon any other signature that he might give in ordinary transactions.

Q. 12. Now, as to the president or the vice-president of the bank? Substitute either of these officers, in place of the cashier, as to whether that did, or did not, fall within the ordinary scope of their duties to borrow money on behalf of their banks?

A. I should say it did, as to the president and the cashier. Vice-presidents are not usually active in the management of the bank.

Q. 13. Suppose a case where the president was the inactive man, and that the actual management of the bank was with the vice-president?

A. Then, of course, he would become recognized as the active officer.

Q. 14. Mr. White, has there been any change in the custom of

banks since the decision of the Supreme Court of the United States in the case to which I have referred in the spring of 1894?

A. Yes; there has.

Q. 15. What is that change?

A. Since that decision many banks have required a resolution of the board of directors, authorizing the rediscounting of paper, or the borrowing of money upon what we call "made paper;" though it is now and then not insisted upon.

Q. 16. What do you mean by "made paper," Mr. White?

A. Such paper as I could make myself, in my official capacity; fill up a note at thirty days, or sixty days, or call loan, and
168 sign my name, officially, to it; just as a man would make up his own note and take it to the bank for discount; it does not represent anything except his own obligation. Bills payable, it would be called.

Q. 17. Mr. White, prior to the time of this decision, was any such resolution of the board of directors ever required or called for, in your knowledge?

A. I have never heard anything of that kind. I know that we never thought of such a thing.

Cross-examination by Mr. HERRON:

Q. 1. Is it an ordinary thing in Cincinnati for a banker to borrow three or five hundred thousand ($300,000.00 or $500,000.00) dollars for his bank?

Question objected to by counsel for plaintiff.

A. I should consider it to be an extraordinary thing.

Q. 2. Have you ever known of such a transaction in Cincinnati without consulting the board of directors of the bank?

Question objected to by counsel for plaintiff.

A. No, sir; I never knew of such a transaction either with or without consulting, or getting the consent of the directors.

Q. 3. What kind of loans do you refer to, Mr. White, as ordinary loans?

A. Well, where a bank is short in money, and long in bills, as frequently occurs, it is legitimate and proper to discount those bills and build up the cash of the bank. It is not an unusual thing for a bank to discount freely in anticipating the withdrawal of deposits. You can't pay checks with notes; and the only thing to do, when you are long on bills and short on cash, is to discount these bills—lessen your bills receivable, and thereby increase your cash—which I refer to as legitimate banking. Now, it often happens——

Q. 4. How much was the sum that was borrowed, in the case of Mr. Cook, to which you have referred?

A. My impression is that it was seventy-five thousand ($75,000) dollars.

Q. 5. And you think that that was reported to the board of directors?

A. I think that the minutes of our meetings would show that it was. I am distinct on one point, and that is, that that seventy-five thousand dollars was never to be checked against; that it was to count as a part of the resources of the bank; which, of course, enabled the Fourth national bank to withdraw a like amount of money, and at the same time have the seventy-five thousand dollars to their credit.

169 This is rather gratuitous information, but I want to place the Fourth national bank right. That is, many years ago; over 15 years ago.

Q. 6. In your experience, Mr. White, would not large transactions of that kind be talked over with the board of directors, whether there was any minute made of the transaction or not?

Question objected to by counsel for plaintiff.

A. It should be; and an officer that would do otherwise, in my opinion, would be usurping to himself more responsibility than was conferred upon him when he was elected to his position by the board of directors.

Q. 7. Mr. White, I will ask you whether it has been an ordinary transaction, in your experience in banking, for a party to deposit to the credit of a Cincinnati bank, in another bank, money, with directions that the money should be placed by the Cincinnati bank here to his credit.

Question objected to by counsel for plaintiff.

Mr. WHITE: Read that question again.

Question is read to witness.

A. Such transactions are not unusual in the ordinary line of business. For instance, we shipped a large amount of bonds to a bank in Boston last week, where we had no account, with directions to deliver the bonds and deposit the money with our correspondent, and so advise us; which he did, and we placed that money to the credit of the party for whom we shipped the bonds, to their credit in the Fourth national bank. Is that answering the question?

Q. 8. Yes; now, in the same way, is it not customary for you to receive advice that some person has deposited money in a New York bank to your credit, and when you are advised of that fact you place that money to his credit in your bank?

Question objected to by counsel for plaintiff.

A. Yes.

Q. 9. That is a usual transaction in your experience of banking?

A. Yes.

Q. 10. It is a usual transaction?

A. Yes; it is not unusual—not an unusual transaction.

Redirect examination by Judge WORTHINGTON:

Q. 18. Mr. White, is it a usual transaction in your bank for you to give a person credit there upon his own statement, without evi-

dence of any kind, that he has deposited money to your credit in New York, or any place else?

A. We should not make such a credit as that.

Q. 19. You would wait until you had received advice from the bank where he said he had deposited the money?

170 A. Most certainly we would.

Q. 20. Mr. White, as to whether a loan ordinary, or extraordinary, as between banks, either in its circumstances or amount, is it affected at all by the fact that the lending bank is a correspondent and reserve agent of the borrowing bank?

A. It would be.

Q. 21. In other words, in such cases what would seem a large loan as between banks which were strangers to each other, would not be between correspondent banks?

A. It would depend upon the capital of the correspondent. Five thousand ($5,000.00) dollars we should consider, with some of our correspondents, quite as much as fifty thousand ($50,000.00) dollars in other instances—as we would in the discounting of paper. We might, for instance, consider one thousand ($1,000.00) dollars ample to loan you, for your purposes; while we might consider that five thousand ($5,000.00) dollars for our venerable friend, Mr. Herron here, was not more than legitimate for his purposes.

Q. 22. In other words, Mr. White, the lending bank judges by the circumstances in the case?

A. Yes.

Recross-examination by Mr. HERRON:

Q. 11. Suppose you, yourself, had ten thousand dollars in New York city ($10,000.00), which you had directed to be deposited with your correspondent to the credit of the Fourth National Bank of Cincinnati, the money being your own, would your book-keeper here, on your statement of that fact, place that money to your credit? Would that be a usual transaction, as president of the Fourth national bank, you stating to your book-keeper that the money so credited was your own, would it be an unusual thing for the book-keeper to credit that money here to you, and charge it to the New York house?

Question objected to by counsel for plaintiff.

A. The book-keeper would, in all probability, make the entry, as he is simply an employé, subject to the control of the officers and directors to debit or credit, as the case might require.

Q. 12. And if the president of the bank informed him that that money belonged to himself, he would make that entry accordingly?

A. He would do it if he so considered the transaction—as a probable and likely transaction; otherwise, he would jeopardize his position that he occupied, if he declined to carry out the demands of his superior officer.

Q. 13. In other words, if he had no reason to doubt your

171 statement that the deposit belonged to you, it would be his duty to credit that to your account?

A. It would, most assuredly so.

Q. 14. Would you consider it any part of the duty of the book-keeper to report such a transaction to the directors of the bank?

Question objected to by counsel for plaintiff.

A. Not unless he had good and valid reasons to do so.

Q. 15. Unless he had reason to suspect the truth of what you said?

A. Yes.

Re-redirect examination by Judge WORTHINGTON:

Q. 23. Mr. White, the case that Mr. Herron has quoted is one where you speak to your book-keeper yourself, and don't show him any evidence that you have made any deposit in New York city, or anywhere else; and the question that I am going to put to you is this: (Don't suppose for a moment that I think you capable of it—but), suppose, as a matter of fact, that you never had made such a deposit to the credit of the Fourth national bank, in this other place; and that in telling the book-keeper that you had done so, and in directing him to make the credit you were directing him to make, a false and untrue entry; and suppose that the true fact was that instead of making the deposit in the other bank, that you had borrowed the money for the account of the Fourth national bank, and deposited that loan in this foreign place—the bank in New York—and had left it there on deposit with that bank; and then that you reported to the book-keeper, and he made the entry to your credit. Now, suppose that when your correspondent in New York rendered you the monthly account of its dealings with you, that in that account it appeared that a loan had been made to the Fourth national bank of this sum, but that no deposit had been made to its credit by you; and that that came to the knowledge of the book-keeper; tell me whether you think, under those circumstances, that it would have been the duty of the book-keeper to report that transaction, after he had received that account?

A. It would have been his duty, in my opinion, to have first informed the president of the transaction, if the cashier had made such a transaction, or the vice-president, if the president had, or the president, if the cashier had. Beyond that, I think his duty would end.

Q. 24. Suppose that the evidence to the book-keeper, at the time of the transaction, was that both the vice-president and the cashier were in the same boat?

172 A. Had the book-keeper knowledge that they were in the same boat, it would have been proper for him to have informed the finance committee, which is composed of probably two or three members of the board of directors, who act for a certain period.

And also FRANKLIN ALTER, called on behalf of plaintiff, being first duly sworn, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Alter, were you ever connected, in any capacity, with the Fidelity National Bank of Cincinnati?

A. Yes, I was one of the board of directors, in the start.

Q. 2. For how long did you continue to be a member of the board of directors?

A. Well, from March, I think, 9 months.

Q. 3. Do you recollect when the bank started business?

A. Yes, sir; in March, I think.

Q. 4. March of what year?

A. March, 1886.

Q. 5. And you continued a member of the board of directors for nine months?

A. Yes, sir.

Q. 6. Mr. Alter, state, during that time, who had the practical control and management of the Fidelity national bank?

A. E. L. Harper.

Q. 7. Was that known to all of the board of directors?

A. Yes.

Q. 8. Was it with their consent and approval that Harper managed the bank?

A. Yes.

Q. 9. Were the directors advised of the transactions of the bank, in the way of loans and discounts, and cash items, and other things of that kind?

A. I don't think they ever were, in detail, unless they went outside and got their information from other sources.

Q. 10. They practically entrusted the whole management of the bank to Harper?

A. Yes.

Q. 11. What was E. L. Harper's position in the Fidelity?

A He was vice-president.

Q. 12. Do you know of any efforts made by the members
173 of the board of directors, within the board, at that time, to find out the condition of the bank?

A. Yes.

Q. 13. By whom?

A. Myself.

Q. 14. Did you succeed?

A. No, sir.

Q. 15. Why not?

A. I was refused access to the papers.

Q. 16. Refused by whom?

A. By Briggs Swift, on Harper's advice.

Q. 17. Do you know whether this was with the consent of the other members of the board of directors?

A. Well, I don't think they were advised of it.

Q. 18. Do you know, Mr. Alter, whether any of the members of

the board of directors were, in fact, representatives of E. L. Harper, holding their tender by reason of having his stock put in their names?

A. Well, I presume that the cashier was—I don't know that of my own knowledge; but I think there is no question about that; Mr. Gahr, for one, and Mr. Matthews for another.

Q. 19. How about Mr. Baldwin and Mr. Hopkins?

A. Well, they were certainly furnished the money, to represent any stock that they held, by Harper.

Cross-examination by Mr. HERRON:

Q. 1. Who was president of the Fidelity?

A. Briggs Swift.

Q. 2. And Mr. Harper was vice-president?

A. Yes, sir.

Q. 3. And, Mr. Alter, how many directors were there?

A. Five, I believe.

Q. 4. Oh, more than that?

Judge WORTHINGTON: Take the minute book, Mr. Alter, to refresh your memory. I show you here, the first list of directors, as recorded in the minute book, on page 7. See if that will refresh your memory as to the number of the board of directors?

A. (After reading list.) Yes, I don't think Mr. Fleischman served. There are five here, that I remember; there are nine here in all, but these men were taken in after I went out.

Mr. HERRON:

Q. 5. There were nine directors?

A. Yes, according to this list; but they were not active members when I was in the board.

Q. 6. Who were the first directors?

174 A. Well, if this is the first meeting, they were: Henry B. Morehead, Solomon P. Kineon, Edward L. Harper, Briggs Swift, Wm. H. Chatfield, Franklin Alter, Charles Fleischman, James H Matthews, Albert P. Gahr.

Q. 7. Will you refer to the meeting in January, 1887?

A. Yes, sir.

Q. 8. Who was elected in January, 1887?

A. Briggs Swift, E. L. Harper, W. H. Chatfield, Henry Pogue, A. P. Gahr, Sol. P. Kineon, J. H. Matthews, Ammi Baldwin, Benj. E. Hopkins.

Q. 9. You say that you did not report to the board of directors that fact, Mr. Alter—that you were refused access to the papers?

A. No, sir; I had a reason for not doing it.

Q. 10. Well, you didn't do it?

A. No, sir.

Q. 11. What papers were they, Mr. Alter, that you were refused access to?

A. It was the call-loan account.

Q. 12. Have you any personal knowledge in regard to the stock owned by Baldwin and Hopkins?

A. No, sir; I never knew the amount they held.
Q. 13. Or Mr. Gahr, or Mr. Matthews?
A. No, I never knew the amount they held, either.
Q. 14. Have you been a director in other banks, Mr. Alter?
A. Yes.
Q. 15. Have you ever examined in those banks the condition of their accounts with other banks?

Question objected to by counsel for plaintiff.

(Continuation of question)—or detail of their accounts with other banks—banks with whom they had correspondence?
A. Well, I don't think that I ever did, unless as an examiner on committees.
Q. 16. You don't know whether you did as examiner, examine the details of the accounts?
A. No.

Redirect examination by Judge WORTHINGTON:

Q. 20. Mr. Alter, in answer to one of Mr. Herron's questions, you started to say something about having a reason for not reporting to the board of directors the fact that you were not allowed access to the call-loan account?
A. Well, yes; I was in the minority. My opposition to the methods that were adopted and carried out in that bank resulted in a committee being appointed to investigate the character of
175 Harper, Baldwin and Hopkins, with a view to deciding whether they were the proper parties to run that bank; and I had fair prospects, in the start, of having that committee report; I was on the committee. But when the meeting of the board was held, they decided not to hear our report; and forever after that I thought that the other directors might get their information wherever they saw proper. That was within thirty days after the start of the bank, and I never had any actual business with the bank after that.
Q. 21. Within thirty days after the organization of the bank, you were on a committee to investigate as to whether Harper, Hopkins, and Baldwin were proper persons to run the bank?
A. Yes.
Q. 22. And when the board of directors knew that you were ready to report, they refused to receive your report?
A. Yes, sir.
Q. 24. Had the purport of the report got out, so that the board of directors knew it?
A. Yes, and Mr. Swift was fully advised.
Q. 25. Do you recollect who it was that voted not to receive that report?
A. Well, there was no vote came up on the question. I was a witness before about this matter, and I will simply quote my evidence in that case. When I notified the meeting that I was ready to report, the president, Mr. Swift, spoke up and said, "We

don't propose to have anything to do with this matter. We are satisfied that the whole thing is nothing but Hearn's damn lies."

Q. 26. The matter investigated having been conduct of Harper, Baldwin and Hopkins, while in the Third national bank, before they came to the Fidelity national bank?

A. Yes, sir.

Q. 27. Mr. Hearne was president of the 3rd national bank?

A. Yes sir.

Recross-examination by Mr. HERRON:

Q. 17. As I understand, Mr. Swift thought that this whole story came from Mr. Hearn, the president of the 3rd national bank, where those three—Harper, Baldwin and Hopkins—had formerly been employed, and that it was not true, and that they would have nothing to do with it?

A. Yes, sir.

Q. 18. They all had been connected with the Third na-
176 tional bank prior to their connection with the Fidelity national bank?

A. Yes, sir.

Q. 19. Baldwin, as cashier; Hopkins, as teller, and Harper as a director?

A. Yes, sir.

Re-redirect examination by Judge WORTHINGTON:

Q. 27. And it was after this state of affairs that Harper was left with the full management of the Fidelity national bank?

A. Yes, sir.

Re-recross-examination by Mr. HERRON:

Q. 20–20. That is, Mr. Alter, there was no change made after that time?

A. No, sir; I think not.

At this point the taking of further testimony was adjourned until half past two o'clock, same afternoon.

Half past two o'clock, same day. Met pursuant to adjournment, same place; same parties present.

And also, CHARLES ARTHUR HINSCH, called on behalf of plaintiff, being first duly sworn, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Hinsch, were you connected in any way with the late Fidelity national bank of this city?

A. Yes, sir; I was.

Q. 2. In what position?

A. Assistant receiving teller.

Q. 3. During what time?

A. From about a week after the beginning of the bank to the close.

Q. 4. What officer of the bank, if any, had the actual control and management of the bank?

A. Edward L. Harper.

Q. 5. What was his position in the bank?

A. He was vice-president.

Q. 6. Did he dictate as to all the operations of the bank?

A. Yes, sir.

177 Q. 7. Do you know whether or not the other directors of the bank knew that he was running the bank according to his own ideas?

A. I don't know—that is—I suppose you mean the directors, at the close of the bank?

A. Not merely at the close of the bank, but during—say along from December, 1886, to May, 1887—along during that period; in the early part of the last six months.

A. I don't know, sir.

Q. 8. Mr. Hinsch, who was it, if any one, that said as to what items should be held over as cash items, if you know?

A. Edward L. Harper.

Q. 9. Who was it, if any one, that said as to what loans should be made, and what discounts?

A. Well, I don't know that I know that. That would not come under my supervision at all.

Q. 10. Cash, and cash items, are all that came under your jurisdiction?

A. Yes, sir.

Cross-examination by Mr. HERRON:

Q. 1. There was a president of the Fidelity national bank, I believe, Mr. Hinsch?

A. Yes, sir.

Q. 2. Cashier, an assistant cashier?

A. Yes, sir.

Q. 3. And nine directors?

A. Yes, sir; I don't remember the number of directors, but guess that was it.

Q. 4. You knew at that time who the directors were?

A. Yes, sir.

Q. 5. You saw them sometimes about the bank?

A. Occasionally.

Q. 6. Do you know whether there were directors' meetings held, or not?

A. No, sir.

Redirect examination by Judge WORTHINGTON:

Q. 11. Mr. Hinsch, you say that you saw the directors occasionally, there in the bank, what do you mean by that?

A. Why, they would walk in occasionally.

Q. 12. Did they pay any attention to the business of the bank?
A. I could not say. They would be either transacting some business in the bank—or appeared to be transacting business——
Q. 13. Business of their own, you mean?
A. Yes, sir; business of their own.

178 Recross-examination by Mr. HERRON:

Q. 7. Did you not see them go into the directors' room—there was a directors' room there?
A. Yes, sir.
Q. 8. Well, did you see them go into that room? You did, sometimes, I suppose?
A. Well, I hadn't any direct knowledge of that, no, sir; because the directors' room was so far from our desk that we didn't busy ourselves about that.

And also, SOLOMON P. KINEON, called on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Kineon, were you ever connected with the Fidelity national bank of this city?
A. Yes.
Q. 2. In what way?
A. I was elected a director of that bank.
Q. 3. During what time were you a director?
A. From the time it commenced until two or three months before it closed.
Q. 4. It failed, as appears, in June, 1887; how long before that had you ceased to be a director?
A. I couldn't say exactly. I think about six or eight weeks before that. The last meeting there, I think, shows when I quit—in the minute book there.
Q. 5. I call your attention to the minutes of the meeting on May 10, 1887, page 43, of the minute book; see if that will refresh your memory?

(Handing minute book to witness.)

A. Yes; that (referring to pages 43 and 44 of minute book) refreshes my memory. That is when I quit; when this resolution was offered.
Q. 6. Up to the time you quit, Mr. Kineon, who was the active officer managing the bank?
A. Mr. Harper—E. L. Harper.
Q. 7. What was his official position?
A. He was vice-president.
Q. 8. What did he do with reference to the bank?
A. He did everything; he ran the whole bank.
Q. 9. Did the directors know that he was running the whole bank?

A. Well, I guess that they were aware that he had charge. I don't know why they didn't.

179 Q. 10. Mr. Kineon, look over the minutes of the board of directors, and state whether that records correctly, according to your recollection of the proceedings of the meetings of the board during the time that you were there.

A. All of them?

Q. 11. Well, there aren't very many.

A. Well, this, here on page 44, is not exactly the way it was done. It says, "Mr. Kineon here gave his resignation," well, I didn't. None was necessary. When Harper bought my stock, that was all that was necessary; that is the meeting of May 10th.

Q. 12. Mr. Kineon, I will call your attention to the fact that, according to the minutes, on February 25, 1886, there was a meeting of the board for organization; and that J. H. Mathews resigned as a director, and Henry Pogue was elected to take his place, and that the cashier and the assistant cashier were elected; and that the next meeting was held on May, 6, 1886, and that sundry business was done. Was there any meeting of the board of directors between that period?

A. I don't remember.

Q. 13. I see that the next meeting appears to have been held on August 2nd, 1886. Do you recollect whether there was any meeting of the board during that interval?

A. No, sir; I have no recollection of it.

Q. 14. And the next meeting was on August 10, 1886, at which there was no quorum. The next meeting was on Sep. 14, 1886, at which there was no quorum; the next was on October 12, at which there was no quorum; the next was on October 9, 1886, at which there was no quorum. The next meeting was on December 14, 1886, at which there was no quorum, and then the next meeting was held on December 24th, 1886. Now, do you recollect of their being any meetings in that interval at which there was no quorum?

A. No, sir; I do not.

Q. 15. Did the directors of the Fidelity national bank require of Harper that he make any report to them of the affairs of the bank other than appears on these minutes?

A. No, sir; not to my knowledge.

Q. 16. Did the directors of the bank have recognizance of what was being done in the bank, so far as you know?

Question objected to by counsel for defendant.

A. No, sir; I don't know whether they did or not. I could not say. I can only speak for myself. Several things went on there that I called Mr. Swift's attention to; and that was about

180 Harper's large account that he had to his credit, with the Riverside Iron and Steel Company, and the Swift's iron & steel works——

Q. 17. When did you call Mr. Swift's attention to those things?

A. About two months and a half after the bank was opened.

Q. 18. How often did you call Mr. Swift's attention to those things?

A. Well, I think it must have been at least half a dozen times. Then he took me into the back room and showed me the large amounts that he had to his credit, and asked me what I thought of that. I never said anything to anybody, only to Mr. Swift.

Q. 19. Was anything said in any meeting of the board at which you were present, on that subject?

A. Not a word.

Q. 20. Upon any subject relating to Harper's management of the bank?

A. Not until I spoke of it in this meeting of May 10th. I frequently spoke to Mr. Swift, and then to Harper; and it seemed to make him mad; and Swift said that Harper said that if he would do as Kineon said, he would have all the money in the bank, and not a loan made. Swift came to me and said, "Harper says you would not have any loans out at all, if you were running the bank." I made the remark that I thought it might be convenient to have the money in the bank some day.

Q. 21. When was that, Mr. Kineon?

A. It was about the time that that peanut and vinegar man failed down here. The books will show that. I don't remember his name. I know I called their attention to it. And Harper made a bluff at it, and sent Hopkins down there, and he came back and reported that the place was full of peanuts; and I said if it was, it was not worth the money he had from the bank.

Q. 22. Did Harper ever report to the directors the loans he had made?

A. No, I never heard him.

Q. 23. Or as to the items that were being carried as cash, at the receiver's desk?

A. No, he never said anything about that.

Q. 24. The directors knew that Harper was loaning the money, I presume?

A. They must have; the book was there that people could see. He had the book there, of call loans and loans on his desk, whether he had them all on it or not, I could not tell; but he kept that out there on his desk.

Q. 25. Was it ever produced at directors' meetings?

181 A. No.

Q. 26. This motion that you speak of, Mr. Kineon, that you had made on May 10, 1887, had that been broached prior to that meeting, at any meeting of the board of directors?

A. No, I had talked with Mr. Swift frequently about it, and told him he ought to go over the loans. He kind of laughed at me. I told him it was his place to talk.

Q. 27. The motion seems to have been carried; and then your resignation was accepted. What occurred then—at that time?

A. Why, when I made the motion—do you want me to go into all the details of that meeting? It is a long story.

Q. 28. It's interesting. Go on.

A. Well, I made the motion. Harper objected, and Mr. Swift spoke up and said he didn't think there was anything wrong about that; and I told him that I insisted upon the motion being put and passed upon; and Harper then made the remark that he insisted upon my resigning. I told him that I was not elected by him, and that I didn't think it was necessary to make a motion of that kind; and that I was not going to resign in that way; at which he got very much put out and excited. I told him that I was astonished; that there was one way easier than that to put me out. I told him to just give me two hundred for my stock, and that "puts me out of the board," I said "when I sell my stock." I said, "Then you can elect anybody you please." He made the remark that he would give me a check, and I could bring the stock up in the morning. I said, No, I would not do it in that way; that my word was just as good as his. So he went out and got the money and laid it on the table; and I took up the money and started to go out, when he stopped me and asked me not to say anything about it; I said that I would not if he didn't; he said he would not. Then they elected Eugene Zimmerman to fill my place.

Cross-examination by Mr. HERRON:

Q. 1. Mr. Kineon, you were a director from the beginning of the bank, were you?

A. Yes.

Q. 2. How many meetings of the board of directors did you attend?

A. I could not tell you. I have no recollection now of that.

182 Q. 3. Did you attend regularly?

A. Yes, every time they called a meeting.

Q. 4. Their by-laws provided for monthly meetings?

A. I believe so.

Q. 5. Did you attend as often as once a month?

A. I went whenever they had meetings; I don't remember how often that was.

Q. 6. Were you on any committees?

A. No, I never was on any committee.

Q. 7. This book which you speak of, Mr. Kineon, was that a statement made out each day of the loans?

A. Yes, it was supposed to be.

Q. 8. And that was on the president's table all the time, you say?

A. On the vice president's table.

Q. 9. Open to the inspection of the directors?

A. Yes, that was the supposition.

Q. 10. Did you ever look at it?

A. Yes, a good many times.

Q. 11. And you went over the list?

A. Yes.

Q. 12. Is that the way you got your information as to the loans?

A. Yes.

Q. 13. And what was your objection about Harper's account? I didn't quite understand what you said about that.

A. I thought he had too much money to his credit.

Q. 14. Well, was there too much money loaned to him?

A. Well, this was what I was trying to find out.

Q. 15. But the amount to his credit on the books of the bank seemed to be large?

A. Yes; very large. And I asked Mr. Swift how it came about, and Mr. Swift made the remark that he had more money than he ever knew he had.

Q. 16. Was Mr. Harper, during all that time, engaged in other business?

A. I think he was in the pig-iron business, and was running the Swift's iron and steel works.

Q. 17. And he was doing a very large business in pig iron?

A. I think he was.

Q. 18. Was he running, at that time, the Riverside Iron and Steel Co.?

A. Yes.

Q. 19. That was a pretty large account, too?

A. Yes.

Q. 20. And did you know of any other business that he was engaged in during that time, except those three?

183 A. No.

Q. 21. He was the president of the Swift's iron and steel works?

A. Yes.

Q. 22. And he was the main man in the firm of E. L. Harper & Company?

A. Yes.

Q. 23. And he was president of the Riverside Iron & Steel Company?

A. Yes.

Redirect examination by Judge WORTHINGTON:

Q. 29. Your idea, Mr. Kineon, about these discounts—about this discount book—was that you did not know whether it truly represented the discounts?

A. No; I could not tell that. The first day I tried to find out anything I got bluffed by Mr. Swift and Mr. Harper both. They gave me the laugh.

Q. 30. You say, Mr. Kineon, that you attended every meeting of the directors which you were notified to attend?

A. Yes.

Q. 31. Have you any recollection as to how often you received notices to attend?

A. No; I haven't.

Q. 32. Were you out of the city during that period—from March, 1886, until May, 1887—when you resigned?

A. No; but I was sick one meeting—yes, I was sick during that time; and I know of one meeting that I did not attend. I was sick out at my home in Clifton, and I didn't come down; that was the

meeting where they tried to increase the capital stock. That is the only one that I can recollect now that I did not attend.

Recross-examination by Mr. HERRON:

Q. 24. Mr. Kineon, when was it, this time you were "bluffed," that you speak of?

A. It was about the time that I tell you of, when this peanut and vinegar man (Weller) failed.

Q. 25. How long before the bank failed was it?

A. I could not say that either. After that I didn't pay much attention to it.

Q. 26. It was some time before you sold your stock?

A. Not a great while, I think.

Q. 27. Did you ever say anything to any of the directors, at the meetings, about having the bills receivable and the loans examined, Mr. Kineon?

A. I spoke to Mr. Chatfield about it several times.

184 Q. 28. Did you ever bring the matter before the board of directors?

A. No, sir.

Q. 29. Did you ever suggest that there should be more meetings of the board of directors?

A. No; I did not.

And also, WILLIAM A. GOODMAN, called on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Goodman, you are president of the National LaFayette bank, of this city, are you not?

A. Yes, sir.

Q. 2. How long have you been connected with the banking business in this city, Mr. Goodman?

A. Twenty-odd years——

Mr. HERRON: Oh, more than that, Mr. Goodman; come now——

A. Well, thirty years. I don't want to go back too far. Well, I went into the bank in 1858, with Mr. Scarborough—into the original Ohio Valley bank.

Judge WORTHINGTON:

Q. 3. And have been in the banking business ever since, have you not?

A. Yes; I have been an officer ever since.

Q. 4. Were you cashier then?

A. Yes; I was cashier then.

Q. 5. And since that time?

A. I was vice-president of the National Bank of Commerce, and of its successor, the National La Fayette bank——

Q. 6. How long have you been president of the National La Fayette bank and its predecessor?

A. I organized the Bank of Commerce in 1876; in 1879 we bought the La Fayette bank; and I have been president ever since; ever since 1879.

Q. 7. Mr. Goodman, tell us whether or not, prior to the decision of the Supreme Court of the United States, in the spring of 1894, in the case of The Western National Bank *vs.* David Armstrong, receiver of the Fidelity national bank, it was an unusual or an extraordinary thing for a bank to borrow money?

A. To borrow money of a corresponding bank?

185 Q. 8. Yes; of a corresponding bank.

A. It was not a very unusual thing; it was rather unusual, but not an extraordinary thing. It was done, though, frequently. I never did it—or the bank with which I was connected.

Q. 9. Mr. Goodman, tell us whether one bank in lending to another bank prior to the decision of the supreme court in the spring of 1894, in the case to which I have referred, ever required the passage of a resolution by the board of directors of the borrowing bank, authorizing any of its officers to make the loan?

Question objected to by counsel for defendant.

A. I don't know.

Q. 10. Well, what I want to get at, Mr. Goodman, is as to the usage of the banking business. Do you not know how the banking business was carried on during that time?

A. Yes.

Q. 11. If it had been, or had not been, usual to require such a resolution, would it not have come to your knowledge?

A. Not necessarily; no, sir. I will make this statement in connection with that: We have applications from our correspondents to loan them money; but we always discount their paper. If they had required a loan on their own account, we should have required a resolution of the board of directors. We do not have many country correspondents. Frequently we discount their paper. In that case we have not required a resolution of the board of directors; but if we had had an application from a bank to borrow money on their own name, we certainly should have required a resolution of the board of directors.

Q. 12. Well, now, Mr. Goodman, are you reasoning now from the light of the past, or did the matter ever come up?

A. We have never had a case come up—I am merely stating what I naturally would have done any time since I have been in the banking business.

Cross-examination by Mr. HERRON:

Q. 1. Mr. Goodman, is it an unusual thing in the banking business for a customer of your bank to have money deposited to your credit in a foreign bank—in a foreign city—with instructions to have that sum placed to your credit in that bank, and for you then to credit him with the amount in your bank?

A. It is not a very common thing, but it has been done frequently?

Q. 2. Such a matter does often happen in banking busi-
186 ness? You know it does, don't you?

A. Yes, I suppose I do. You understand, Mr. Herron, we don't do a country business, and don't have much to do with loaning of money to country banks. We frequently have money transferred in that way.

And also, W. S. ROWE, called on behalf of the plaintiff, having duly affirmed, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Rowe, you are now the cashier of the First national bank of this city, are you not?

A. Yes.

Q. 2. How long have you been engaged in the banking business in this city?

A. Twenty-two years.

Q. 3. What positions have you held during that period?

A. About all the clerical positions.

Q. 4. How long have you been acting as cashier, of one bank or another?

A. Fourteen years.

Q. 5. How long have you been in the First national bank as cashier?

A. Nearly 6 years.

Q. 6. And prior to that, with what bank were you connected?

A. I was with the Second national bank; and with the old bank of Gilmore & Company; the Merchants' national bank and the La Fayette bank.

Q. 7. What position did you hold in the Second national bank?

A. I held most of the clerical positions there, and, finally, acting cashier, and subsequently, cashier.

Q. 8. When did you become acting cashier?

A. In 1881, and cashier in January—the January election in 1882.

Q. 9. Mr. Rowe, tell us whether or not, prior to the decision of the Supreme Court of the United States, in the case of The Western National Bank *vs.* Armstrong, receiver of the Fidelity national bank, in the spring of 1894, about a year ago, it was considered within the scope of the duties of the cashier of a bank to borrow money for his bank?

A. Yes, it was.

Q. 10. What, if anything, was required by the lending bank,
187 beyond the applicatien of the cashier, or one of his superior officers—the president or the vice-president of the bank?

A. Our rediscounting for country banks, for the loaning of the money, was usually done by correspondence, and the letter would be signed by either the president, vice president or cashier. If it was a rediscount, we took their acceptable business paper; with their endorsement; if it was a direct loan, we took the note of the bank, signed by one of the three officers I have named; with munic-

ipal bonds, or other good bonds as collateral, without anything else.

Q. 11. Was any resolution of the board of directors required?

A. No, sir.

Q. 12. Do you know whether that was usual in banking—in the banking business, prior to 1894?

A. It was not, so far as my knowledge goes?

Q. 13. Mr. Rowe, was the borrowing of money by one bank from another an extraordinary thing, in the banking business?

A. No. The country banks often did it—borrowed from us.

Cross-examination by Mr. HERRON:

Q. 1. Mr. Rowe, what proportion of these cases was the rediscounting of paper loaned by the bank?

A. It is pretty hard to tell; probably fifty (50 per cent.) to sixty (60 per cent.) per cent. of it.

Q. 2, And then nearly half of it was actually loaned?

A. Yes. Some of the country banks buy the securities of their own cities, or towns, or counties, and hold them to get money on, really, at certain seasons of the year when they need it, because those securities are better known. It is a class of securities that is better known in the city than the paper they get, especially in the farming communities.

Q. 3. Well, what proportion of the loan would be secured by such bonds or securities as collaterals?

A. All of the loans that we take, and have taken, from country banks, are always secured in one form or another.

Q. 4. By either bonds or securities?

A. By acceptable collateral.

Q. 5. How large would these loans be—in your experience, I mean?

A. Well, I remember one bank that we rediscounted—that we loaned one hundred and fifty thousand ($150,000.00) dollars to on bonds and securities. I remember another that we rediscounted from one hundred thousand ($100,000.00) to one hundred and fifty thousand ($150,000.00) dollars, just prior to the panic of 1893—that was in the First national bank. The Second national bank, when I was there, was like the La Fayette bank—local—not much country business.

188

Q. 6. Your experience, then, has been in the First national bank—your experience of this kind?

A. The greater portion of it has been in the First national bank. I did some in the Second; made some loans there on bonds and securities; but it was very small in comparison with what I now do in the First.

Q. 7. Mr. Rowe, how far have you been in the habit of consulting the directors of your bank in making loans of this kind?

Question objected to by counsel for plaintiff.

A. Well, our loans at the First are made by the officers. We hold board meetings twice a week, that is, we have meeting days twice a

week. During the summer we may not have more than one a week. The loans that are made are read to the board then, and any applications that happen to come in on the day of the board meeting, in time, are acted upon at the meeting.

Q. 8. But the loans are always read off to the board at the meeting of the board succeeding the time the loans are made?

A. Yes.

Q. 9. And if the application is made on the day of the meeting, in time, it is acted upon by the board of directors?

A. Yes.

Q. 10. Now, do you remember whether any such applications for loans were read to the board before they were acted upon?

Question objected to by counsel for plaintiff.

A. Very frequently.

Q. 11. But you think that all of them were read to the board of directors, either before they were made, or at the first succeeding meeting after they were made?

A. Yes; that is our rule; probably nine-tenths ($\frac{9}{10}$) of our loans are made by the officers without consultation of the board.

Q. 12. Are you speaking of loans to banks or to individuals?

A. All loans.

Q. 13. Does the amount of the loan make any difference as to whether you should consult the board beforehand or not?

A. If we were satisfied with the security, the amount would
189 make no difference—up to our one-tenth limit, of course. We don't go beyond that.

Q. 14. But it would be a question about the security that is offered as collateral?

A. Yes.

Q. 15. Mr. Rowe, is it a usual, or an unusual thing, in a bank, in your experience, for one of your customers to have money deposited with your correspondent in some other city, and placed to his credit in your bank upon being advised of that deposit?

A. It is very usual with us. We often make those transfers.

Q. 16. If a sum of money is deposited with your correspondent in New York, and the president of your bank should inform the book-keeper that that money belonged to a certain customer, and to credit that amount to his account, would the book-keeper do it?

Question objected to by counsel for plaintiff.

A. Yes.

Q. 17. He would follow the direction of the president in that case?

Question objected to by counsel for plaintiff.

A. In our bank, all of those entries are made on written orders. I would instruct a clerk to the ticket from which the entry would be made; he would make the ticket and bring it to me, and I would put my initials on it. The book-keepers have no right to make an entry of that kind unless on the O K of the officers.

Q. 18. Suppose the cashier or the president made out such a ticket, and gave it to the book-keeper and told him to credit a certain customer with the amount and charge it to the correspondent bank; the book-keeper would, on the faith of that ticket, make the entry accordingly?

Question objected to by counsel for plaintiff.

A. Yes.

Q. 19. And that is a very customary mode of transferring accounts, is it not?

A. It is with us; yes.

Q. 20. Let me read to you the following ticket, Mr. Rowe:

"CINCINNATI, 1887.

The Fidelity national bank.

Credit Check.

Transfer of funds.....
E. L. H..... $300,000"

Is that the kind of a ticket that you refer to as being made by an officer of the bank?

190 A. Yes, that is the kind of a ticket. But that ticket raises another question——

Q. 21. Well, if on such a ticket as that being presented to the book-keeper, it would be his duty to make the entry transferring the funds, would it not—presented by the president of the bank?

Question objected to by counsel for plaintiff.

A. Yes; do I understand you that the ticket was O K'd by the vice-president, to whose credit the funds went, as an individual?

Q. 22. Yes; and that that is the form of the ticket which was presented by the vice-president of the bank to the book-keeper?

A. Yes; it would be the duty of the book-keeper to make the entry.

Redirect examination by Judge WORTHINGTON:

Q. 14. Mr. Rowe, you started to say that that ticket raised another question. What was the other question that occurred to you?

A. Why, the question of an officer of the bank crediting himself—using his position to put a credit to his own account.

Q. 15. That is not usual in the banking business, is it?

A. No.

Q. 16. And in the cases of which you have been speaking, about the transfer of funds, you have been speaking of an outside customer, of the bank, and you make the necessary ticket transferring the funds on your books?

A. Yes; either an individual or a bank. For instance: St. Louis transferred fifty thousand ($50,000.00) dollars to New York, for our credit yesterday; we gave them credit and charged New York.

Q. 17. You have not, then, been saying that it is usual and con-

sidered good banking for a bank officer, upon his own word, to direct a transfer of funds to his own credit?

A. No; but I did, and do, say, that even in that event, on that ticket, that if the order were given, the clerk would and should make the entry.

Recross-examination by Mr. HERRON:

Q. 23. Suppose it was a fact that the president of the bank had deposited in New York one hundred thousand dollars ($100,000) to the credit of your bank, of his own money, and directed the bookkeeper to transfer it to his account, making out such a ticket as I have read to you, would it now be proper for him to do it?

Question objected to by counsel for plaintiff.

A. Yes, if the money were deposited. Naturally, if I were
191 the clerk to make the entry, I would make it my business to see that the money was deposited, and if large sums went through in that way, I would speak to some of the other officers of the bank about it.

Judge WORTHINGTON:

Q. 18. That is to say, if you were the clerk, you would inspect the next account current which came from that bank, to see that that money was really deposited?

A. Yes.

Mr. HERRON:

Q. 24. Then, if you found that that sum had been deposited to them, in New York, that would satisfy your feeling on that subject, would it not?

Question objected to by counsel for plaintiff.

A. Well, I think we are rather going outside of the case. If my superior officer, that I had not confidence in, should direct me to make entries of that sort, and there were many large transactions of that sort, I should certainly feel it my duty to speak to some of the other officers about it.

Q. 25. But if you had full confidence in him, you would do as you were directed, and make no investigation of the matter?

A. Yes, and if he was a man of means, and I knew that the money was deposited in New York, I would make no further inquiry.

Re-redirect examination by Judge WORTHINGTON:

Q. 18. Mr. Rowe, suppose when the New York account current came for the month in which this deposit was supposed to have been made to the credit of your bank, that a credit appeared for the amount, but appeared with the words, "Tem. loan," before it, would that indicate that the money had been deposited by the officers of your bank out of his own moneys?

A. I think that if I were the clerk, it would cause me to look into the matter further.

Q. 19. You spoke to Mr. Herron here about "country banks" borrowing money, Mr. Rowe. What class of banks do you designate as country banks?

A. Banks in small places; the cities in the South, for instance; there are certain seasons of the year, during the moving of the crops—the cotton crops for instance—when they need money to move the crop, and the banks borrow moneys to let their customers have, to move the crops. And the banks up in Ohio, in the
192 agricultural districts, borrow money at certain seasons; up in the large wheat and corn countries; their customers will want money to buy cattle and stock with, and they frequently want more money than the country bank has, and we loan them the money on their municipal or other bonds, and carry the transaction until the crops or cattle are sold.

Q. 20. There are occasions, then, in legitimate banking, where a bank may need money to carry on its business?

A. Yes, in the country, especially. In the city we never borrow or rediscount our own paper, because our business is of a different kind.

Re-recross-examination by Mr. HERRON:

Q. 26. Well, this would arise from the country banks having discounted too much paper, would it not?

A. No, they frequently write us and say that some of their customers want money, which they will give them if we will make them a loan. You will readily see that in the agricultural country, they need more money at certain seasons of the year than at others; and a number of their customers will want more money than they can accommodate them with, unless they can secure a loan.

Q. 27. You have spoken about loaning money, Mr. Rowe, I will ask you about borrowing money. Is it customary for a bank cashier to borrow three or four hundred thousand dollars ($300,000 or $400,000) without consulting his board of directors?

Question objected to by counsel for plaintiff.

A. We never have borrowed money.

Q. 28. Would you regard it as good banking for an officer of a bank to do that, without consulting his directors?

Question objected to by counsel for plaintiff.

A. No, sir; I would not.

And also H. C. YERGASON, called on behalf of plaintiff, being first duly sworn, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Yergason, you are president of the Merchants' national bank of this city?

A. Yes.

Q. 2. How long have you been engaged in the banking business here, in this city?

193 A. Twenty-eight (28) or twenty-nine (29) years.

Q. 3. How long have you been president of the Merchants' national bank?

A. Three years.

Q. 4. Prior to that time did you hold a position in that bank?

A. Yes, I was vice-president for nine years, and cashier for 16 years or 17 years.

Q. 5. Mr. Yergason, state whether or not, prior to the decision of the Supreme Court of the United States, in the case of The Western National Bank *vs.* Armstrong, receiver of the Fidelity national bank in the spring of 1894, it was a usual or an unusual thing for cashiers of banks to borrow from other banks money for their own banks?

A. Well, you refer to the decision of the Supreme Court where it was decided that it was necessary to have a resolution of the board of directors approving the loan?

Q. 6. Yes.

A. Up to a year or a year and a half ago, we did not require any resolution of that kind. If a bank of good standing offered us good collateral, and wanted a moderate amount of money, we accommodated them.

Q. 7. Do you know whether such a resolution was ever demanded by the lending bank before that time?

A. No, sir; I have no recollection of it.

Q. 8. Was it considered within the usual scope of the duties of the cashier of a bank, or his superior officers, to borrow money for the bank, from another bank?

A. Well, we have occasionally made loans of that kind, yes.

Q. 9. What I want to get at, Mr. Yergason, is whether it was usual to make any further scrutiny of their authority than the fact that the officer was really what he purported to be—*i. e.*, president, vice-president or cashier?

A. No, sir.

Q. 10. Do I understand you, Mr. Yergason, that the fact of his holding the office was sufficient authority to make the loan?

A. Yes, sir.

Cross-examination by Mr. HERRON:

Q. 1. Mr. Yergason, what kind of loans do you refer to?

A. Loans by country banks.

Q. 2. In the way of rediscounting paper—bills receivable, of the bank?

A. Yes; sometimes.

Q. 3. In all cases you required good security?

194 A. Well, we have taken obligations of the bank for security.

Q. 4. Did you do that without any action of the board of directors?

A. No, sir; not our bank.

Q. 5. But you didn't know whether they had obtained the action of their board of directors or not?

A. No, sir.

Q. 6. Did you ever borrow any money?

A. Yes, yes; we have occasionally; I think we did in '73.

Q. 7. In such cases, Mr. Yergason, would you not consult your board of directors before doing so?

Question objected to by counsel for plaintiff.

A. Certainly.

Q. 8. You know of no case where money was borrowed by your bank without consulting the board of directors, and obtaining their approval for it?

Question objected to by counsel for plaintiff.

A. No, sir.

Q. 9. Mr. Yergason, is it a usual, or an ordinary thing in banking for funds deposited in New York to the credit of your bank, to be transferred to the credit of an individual here, on the books of your bank?

Question objected to by counsel for plaintiff.

A. It is, yes, sometimes.

Q. 10. What is the mode by which you would make such a transfer of funds?

A. Upon the advice of the corresponding bank in New York, that such a deposit had been made there to our credit——

Q. 11. You would make out a ticket here?

A. Yes; we would make out a ticket.

Q. 12. What kind of a ticket would that be?

Question objected to by counsel for plaintiff.

A. If we had notice that the money had been deposited in the correspondent bank, to our credit, to be transferred to an individual, we would make out a ticket——

Q. 13. And hand that ticket to your book-keeper?

A. Yes.

Q. 14. Who would attend to that transaction?

A. Any one of the officers.

Q. 15. No; I mean after the ticket was made out and handed to the book-keeper. If the cashier or the president of the bank made out such a ticket and handed it to the book-keeper, it would be his duty to make that entry, would it not?

Question objected to by counsel for plaintiff.

A. Yes, sir.

195 Q. 16. And that kind of a transaction is very common?

A. Yes, sir; it is.

Redirect examination by Judge WORTHINGTON:

Q. 11. Mr. Yergason, is it a very common thing for an officer of a bank, by such directions, given by himself, to have money transferred to his own credit, without having advice of any kind from the correspondent bank in which he was supposed to have deposited the funds?

A. No, sir; I think not.

Q. 12. The cases of which you have been speaking, is where customers of the bank come to you with evidence that they had made the deposit in the other bank?

A. Yes; either a certificate of deposit, or a letter of advice, that it is correct.

Q. 13. Having advice of that kind, you make the entry—you direct the entry to be made?

A. Yes, sir.

Recross-examination by Mr. HERRON:

—. Mr. Yergason, where the book-keeper follows the direction of the president or cashier of the bank, in that manner, then it becomes the deposit of the customers to whom it is transferred, and you honor his checks from that on against that deposit?

—. Yes, sir.

At this point the taking of further testimony was adjourned to half past two o'clock, Thursday afternoon, September 19th, 1895.

Thursday afternoon, half past two o'clock.—Met pursuant to adjournment.

Same parties present. Same place.

And also, GRIFFITH P. GRIFFITH, called on behalf of the plaintiff, being first duly sworn, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Griffith, you are the vice-president of the Citizens' national bank of this city, I believe?

A. I am; yes.

Q. 2. How long have you been connected with that bank?

A. Fifteen years.

Q. 3. In what position?

A. As vice-president and cashier.

196 Q. 4. You are vice-president, as well as cashier, and have been during this whole period?

A. Well, since 1887, I have been cashier as well as vice-president.

Q. 5. And prior to 1887, you were vice-president?

A. ——.

Q. 6. Mr. Griffith, before you went with the Citizens' national bank, were you connected with any other banks in this city? If so, in what capacity?

A. I was assistant cashier of the First national bank in 1863; from 1863 to January 1st, 1866. I was cashier of the Third National Bank of Cincinnati from January 1, 1866, to January 1st, 1877, and I was vice-president of the same bank—the Third national—from January 1, 1877, to October 1, 1880.

Q. 7. And it was on Oct. 1, 1880, that you joined the Citizens' national bank?

A. Yes, we opened it then.

Q. 8. Mr. Griffith, please state whether or not, prior to the decision of the Supreme Court of the United States in the spring of 1894, in the case of The Western National Bank *vs.* Armstrong, receiver of the Fidelity national bank, it was usual or an unusual thing for banks to borrow money?

A. It was a usual thing.

Q. 9. Mr. Griffith, please state whether or not, prior to that decision, it was a usual thing for the lending bank to require from the borrowing bank a resolution of the board of directors, authorizing the loan?

A. Never.

Q. 10. State whether or not the borrowing of money for a bank, from another bank, was one of the duties incident to the office of cashier, president or vice-president, or either of them?

A. Well, I don't think you put your question right——

Q. 11. Well, just answer the question according to your knowledge of the facts, please?

A. It is customary to make loans to correspondent banks when applied for either by the president, vice-president or cashier of said bank.

Q. 12. Was proof ever demanded as to the authority of either of the officers you have named, to make the loan?

A. Not to my knowledge or memory.

Cross-examination by Mr. HERRON:

Q. 1. How were these loans generally made?

A. They were made by correspondence almost entirely.
197 Sometimes they were made by personal visitation; and the proceeds always credited to the bank upon the books of the lending bank——

Q. 2. What I meant was this: Are those loans usually made by the rediscount of bills receivable of the borrowing bank, or the direct, independent loans to the bank?

A. If my memory serves me right, the institutions with which I have been connected have never made a loan, direct loan, to a bank, except when secured by securities such as country bonds, United States bonds, or other good and sufficient securities. As for lending money on the made notes of the president, vice-president or cashier, I never have done so, but I have rediscounted their bills receivable to great amounts, taking the endorsement of either one of the officers I have mentioned, as being sufficient.

Q. 3. Have any of the banks with which you have been connected, at any time, borrowed of other banks?

A. I could not remember. We have put up our Government bonds once in a while, and drawn against it, but we were not in the habit—the banks with which I have been connected never had to borrow money.

Q. 4. Mr. Griffith, in your opinion, is it part of the duty of either the cashier, the president or the vice-president to borrow money for his bank without consulting the board of directors of his bank?

Question objected to by counsel for plaintiff as immaterial and irrelevant.

A. Why, I consider it good banking, as well as the duty of an officer of a bank, or one of his official acts, to rediscount his bills receivable, if necessary, when his deposits are called for more rapidly than usual. I see nothing against it. It is his assets. He takes these in——

Q. 5. Well, that is not what we are talking about, Mr. Griffith. We are talking about borrowing money independently, without consulting the directors, and whether you have ever known such a case in your experience of banking?

Same objection by counsel for plaintiff.

A. You mean where a man has borrowed money without the knowledge——

Q. 6. Of the board of directors, or without consulting them?

A. I couldn't tell that. I never asked the question if a party came to me; I never asked the question as to whether the board of directors knew anything about it.

Q. 7. I suppose you do now?

A. Yes; we do now; but I should consider it my duty if
198 I had a run upon me, and had good bills receivable, it would be my duty to discount those bills; and if I couldn't see my directors, it wouldn't take me long to rediscount them without consulting them. We never have any trouble with fellows that do things in an honest, fair shape. It's only these fellows that bust up that you have trouble with.

Q. 8. Mr. Griffith, is it a usual, or an unusual thing, with bankers to transfer from one account to another, or from the bank's account to an individal account, money deposited with their correspondents in other cities?

Question objected to by counsel for plaintiff as immaterial and irrelevant.

A. Well, tell me what you mean by that?

Q. 9. Where a party deposits money in another city to the credit of your bank, but for the benefit of one of your depositors, to have that deposit transferred to his account in your bank—is that a usual or an unusual thing?

Question objected to by counsel for plaintiff.

A. Why, it is perfectly proper to have that done—that is, if I understand your question correctly. If Mr. Worthington deposits

some money in New York, to the credit of our bank, and requests me to credit to John W. Herron, that is perfectly correct, and is often done.

Q. 10. What is the form by which that transfer is made in the bank?

Question objected to by counsel for plaintiff.

A. In the first place, the correspondent of the city bank here telegraphs that so and-so has deposited so much to our credit, and then upon being notified to transfer the amount to the credit of so-and-so, we do it——

Q. 11. Well, how is that done? Do you make out a ticket?

A. Yes; I make out a ticket, and put my initials on it.

Q. 12. What is the form of the ticket—how does it read?

A. It is, "Credit A. so many dollars; charge the account of such and such a bank, by so and so much."

Q. 13. And that ticket is marked by either you or some other official of the bank?

A. Yes; it is never done otherwise.

Q. 14. And that ticket is given to the book-keeper and he makes the transfer on the books?

A. Yes.

Redirect examination by Judge WORTHINGTON:

199 Q. 13. Mr. Griffith, is it usual to make such transfers without advice from the foreign bank in which the deposit is supposed to have been made?

A. No, sir.

Q. 14. I mean is it usual in banking—for instance, for you, in the Citizens' national bank here, upon a customer coming and stating to you that he has deposited so much money to your credit in New York, for you thereupon, upon his words, to give him credit upon your books, here in Cincinnati?

A. No, sir.

Q. 15. That is something that is never done?

A. No, sir.

Q. 16. Mr. Griffith, you have spoken about loans made to banks, from one bank to another, by the borrowing bank either having their bills receivable rediscounted, or by putting up collaterals. When securities are put up as collateral, how is the loan evidenced? How is it usually done?

A. We let the man that comes down make his individual note, and describe the collaterals in it, and sign his name to the note.

Q. 17. The individual who applies for the loan on behalf of his bank, gives his own note to the order of his bank, describing therein the collateral security, and then endorsed the note in his official capacity—is that it?

A. Yes.

Recross-examination by Mr. HERRON:

Q. 15. Mr. Griffith, should you, as vice-president of the Citizens' national bank, present a ticket such as you have described, to your book-keeper, to transfer certain funds to a customer of the bank, and charge it to the bank, would it be the duty of the book-keeper to ascertain whether you had authority for making that entry, or not? Or, would he make it simply on your direction to do it?

Question objected to by counsel for plaintiff.

A. He would make it on my direction to do it. He would have no right to question my authority.

Reredirect examination by Judge WORTHINGTON:

Q. 17. Mr. Griffith, you understood that question as referring to a deposit to be made to the credit of some person else than yourself—some person in whom you were not interested?

A. Yes.

Re-recross-examination by Mr. HERRON.

Q. 16. Well, if you made out a certificate of deposit, or a
200 ticket such as you have described, directing it to be deposited to your own credit, would the book-keeper ask any questions as to your authority?

A. I don't think he would have any right to do so.

And also, J. D. HEARN, called on behalf of plaintiff, being first duly sworn, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Hearn, you are the president of the Third national bank of this city, are you not?

A. I am; yes, sir.

Q. 2. How long have you held that position?

A. Well, since January, 1882. Prior to that I was president of the Covington City national bank, for about ten years, in Covington, Kentucky; and of the Covington branch of the Farmers' Bank of Kentucky, for one year previous to that time.

Q. 3. Please tell us whether prior to the decision of the Supreme Court of the United States, in the spring of '94, in the case of the Western national bank, it was, or was not an ordinary thing for one bank to borrow money from another?

Question objected to by counsel for defendant.

A. It was.

Q. 4. State whether, prior to that decision, it was customary for the lending bank to require from the borrowing bank the passage of a resolution by its board of directors, authorizing the loan.

A. It was not.

Q. 5. Was the passage of such a resolution ever required by the lending bank, so far as your knowledge goes?

A. It never was, so far as my knowledge and experience goes.

Q. 6. Mr. Hearn, what officers acted for the borrowing bank in such transactions?

A. The managing officers; either the president, or the cashier, as the case might be.

Q. 7. How about the vice-president?

A. The vice-president would act if he was an active officer.

Q. 8. What proof, if any, did the lending bank require of the authority of either, or any, of these officers to make the loan, more than the knowledge of the fact that they held their respective positions?

A. Did not require any.

201 Q. 9. Mr. Hearn, did it, or not, fall within the scope of the duties of the cashier, president or vice-president, to borrow money on behalf of his bank from another bank?

Question objected to by counsel for defendant.

A. It did. It was so regarded.

Cross examination by Mr. HERRON:

Q. 1. I suppose that custom has changed since that decision, Mr. Hearn?

A. It has. It changed so far as the Third national bank is concerned; and I may say that it has changed in a number of other banks of which I have knowledge.

Q. 2. Were these loans made by rediscounting of the bills receivable of the borrowing bank, or by direct loans to the bank?

A. Either way, and both ways. When they were direct loans, they generally would put up their bills receivable, or some other collateral, as against it.

Q. 3. In such loans, then, it was customary either to rediscount bills receivable, or to get bills receivable, or other collaterals to secure the loan—as security for the loan?

A. It was. The custom is exactly the same now as it was then, excepting that now we require the action of the board of directors of the borrowing bank regarding it.

Q. 4. Have you had any experience at the other end of the line, Mr. Hearn—at the borrowing end?

A. Yes, we have.

Q. 5. Was it your custom in such cases to consult the directors before borrowing money?

Question objected to by counsel for plaintiff.

A. Do you mean now, or before that decision?

Q. 6. I mean before that time.

Same objection by counsel for plaintiff.

A. We generally consulted with the board of directors—in fact, we always did. We consulted with the board of directors when we borrowed money for the bank.

Q. —. You say that you always consulted with the board of directors before you borrowed for the bank?

Same objection by counsel for plaintiff.

A. Yes, always; and had their consent.

Q. 7. And I suppose that you supposed when you loaned money to a bank that the officers of that bank had consulted with their directors?

Same objection by counsel for plaintiff.

A. I don't know whether I want to say that or not. The amounts that are borrowed of us by our corresponding banks are usually not large; and we take it for granted that the officers have consulted with their boards of directors. We felt that the money for
202 the discount went to the credit of the bank, and was checked out in the due course of business. And in the money was borrowed without proper authority, the money being thus borrowed and placed to the credit of the borrowing bank, and checked out in the usual way, we would, in any case, have a right of action against the bank for money borrowed and received.

Q. 8. When you borrowed yourself, were the amounts large or small?

Question objected to by counsel for plaintiff.

A. Large.

Redirect examination by Judge WORTHINGTON:

Q. 10. Mr. Hearn, I understand that you did not communicate to the lending bank the fact that you had the approval of the board of directors of your bank?

A. No, sir; I don't think we ever did, because I don't think it was ever required, or ever asked of us.

MONDAY AFTERNOON, THREE O'CLOCK, *November* 11, 1895.

Met pursuant to adjournment, at the office of Judge Worthington, in the Wiggins block, Cincinnati, Ohio.

Present, on behalf of plaintiff, Hon. William Worthington; present, on behalf of defendant, Hon. John W. Herron.

ALBERT P. GAHR, called on behalf of the plaintiff, being first duly sworn, testifies as follows:

Direct examination by Judge WORTHINGTON:

Q. 1. Mr. Gahr, you are a resident of Cincinnati?

A Yes, sir.

Q. 2. And your age is what?

A. I am 31.

Q. 3. Are you the A. P. Gahr, who was a director of the Fidelity national bank, late of this city?

A. I am; yes, sir.

Q. 4. Mr. Gahr, what relation did you bear to Edward L. Harper, the vice-president of the Fidelity national bank?

A. Why, I was considered his confidential secretary.

Q. 5. To whom did the stock in the Fidelity national bank, that stood in your name, belong?

A. It belonged to E. L. Harper.

Q. 6. Mr. Gahr, do you know who was the owner of the
203 stock in that bank that stood in the name of J. H. Mathews, who was, also, a director in that bank?

Question objected to by counsel for defendant.

A. To E. L. Harper.

Q. 7. Mr. Gahr, what relation, if any, did Mr. Mathews bear to Mr. Harper?

A. Mr. Mathews was a brother-in-law of Mr. Harper, and he was employed as treasurer of one of his industrial concerns here.

Q. 8. Mr. Gahr, who was the controlling person in the affairs of the Fidelity national bank?

A. E. L. Harper.

Q. 9. What supervision, if any, did the board of directors of the Fidelity national bank give to the affairs of that bank?

A. Only a formal supervision, I believe, such as holding the meetings; but I couldn't tell now, after this long lapse of years, just what we did do, without reference to the minutes.

Q. 10. Did you attend the meetings of the board of directors regularly, Mr. Gahr?

A. Occasionally, yes. I could not say just what meetings I did, or did not, attend; but I made it a point to be present at the meetings when I could. I think I attended most of them.

Q. 11. Mr. Gahr, were the transactions of the bank, in the way of loans and discounts, and otherwise, submitted to the board of directors by Mr. Harper, or to a committee thereof, to your knowledge?

Question objected to by counsel for defendant.

A. Not so far as I know.

Cross-examination by Mr. HERRON:

Q. 1. Mr. Gahr, how long were you a director in the Fidelity national bank?

A. I think I was a director from the inception to the end of the bank.

Q. 2. Were you in that bank much, Mr. Gahr?

A. Almost daily.

Q. 3. You knew a good deal of what was going on, as a director, did you not?

A. Not as a director, no, sir, but what Mr. Harper would tell me, in a superficial way.

Q. 4. As a director, you made inquiries frequently as to what was going on?

A. No, sir, I never made any inquiries.

Q. 5. You only knew what Mr. Harper told you?

A. And in the board meetings—what I heard there.

204 Q. 6. Mr. Gahr, were you not on the committee of loans and discounts?

Question objected to by counsel for plaintiff.

A. I am not positive about that now; but I think not.

Q. 7. Mr. Gahr, what knowledge had you, as a director, that Mr. Harper had borrowed large sums of money from eastern banks, in the name of the bank?

A. None at all, as a director.

Q. 8. When did you first learn of such fact?

A. Why, my recollection is, that after I came home from Chicago, and this run was going on on the bank, that Mr. Harper told me of having made some rediscounts with eastern banks—or that he had made some loan, in some form, and that was my first knowledge of transactions of that character.

Q. 9. How long was that before the bank closed?

A. Possibly three or four days—or some such matter.

Q. 10. Do you know whether any of the other directors of the Fidelity national bank knew of such loans having been made?

A. No, sir; I don't know.

Q. 11. When Harper spoke to you about the matter, did he say, did he specify what discounts he had made?

A. I think he mentioned specially the Chemical National Bank of New York as one of the parties from whom he had borrowed some money, so as to help him through this crush that he was under at that time.

Q. 12. Did he say when he made the loan?

A. I think he mentioned the loan as having been made a day or two before.

Q. 13. It was, then, the last loan from the Chemical national bank that he had made?

A. Well, I could not say as to that. But I would fix the conversation with Mr. Harper as about the 16th or 17th of June, 1887.

Q. 14. And he stated that he had borrowed money from the Chemical national bank two or three days before that?

A. He did not say how long before, but I inferred, from what he did say, that it was only a day or two before; he said that he had borrowed this money to help him out in this run on the bank; rediscounted paper, I think, it was.

Judge WORTHINGTON: I now offer in evidence a stipulation, signed by counsel on both sides, under date of October 14th, 1894; relating to the case of David Armstrong, receiver of the
205 Fidelity national bank, *vs.* Briggs Swift *et al.*, in the United States circuit, southern district of Ohio, western division, No. 4054; marked "Exhibit A," "E. V. R., special examiner."

Also a printed copy of the bill of complaint in the case just referred to, marked "Exhibit B, E. V. R., special examiner."

Counsel for defendant objects to both of the above offers of testimony, not on the ground of the form in which it is offered, but on the ground of incompetency and irrelevancy.

Counsel for plaintiff offers, also, a certified copy of the application filed in said cause last named, on March 12th, 1890, by David Armstrong, receiver; the plaintiff in said cause, for instruction with ref-

erence to proposition to compromise the claim against the defendants, Briggs Swift, the executors of William H. Chatfield, Henry Pogue and Eugene Zimmerman, together with the exhibits thereto attached; marked "Exhibit C, E. V. R., special examiner."

Same objection interposed by counsel for defendant.

Also, certified copies of all the objections filed in said cause to the making of said compromise, viz: The protest of Catherine Brooks, marked "Exhibit D, E. V. R., special examiner." The protest of Oscar I. Frank, marked "Exhibit E, E. V. R., special examiner." The protest of Richard Mallay, marked "Exhibit F, E. V. R., special examiner."

To all of which counsel for defendant makes same objection as above indicated.

Also, certified copy of order made by said court, in said cause, on April 16, 1890, directing the making of the compromise with the defendants in said cause, above named. Marked "Exhibit G," E. V. R, special examiner.

Same objection interposed by counsel for defendant.

Also, a certified copy of order made by the court, in said cause, on May 19, 1890, rendering judgment against Briggs Swift, one of the defendants therein. Marked "Exhibit E, E. V. R., special examiner."

Same objection interposed by counsel for defendant.

Also, a certified copy of order made by said court, in said cause, on July 1, 1891, reviving said judgment against the executors of Briggs Swift, then deceased, and his heirs-at-law and devisees. Marked "Exhibit I, E. V. R., special examiner."

Same objection interposed by counsel for defendant.

Also, a certified copy of an order made by said court, in said cause, on the 4th day of January, 1895, entering satisfaction
206 upon the claim made in said cause against said defendant, William H. Chatfield, and his executors, he being then deceased. Marked "Exhibit J, E. V. R., special examiner."

Same objection interposed by counsel for defendant.

Also, from the printed evidence on behalf of the complainant, filed in said cause, pages 579 to 599 thereof, inclusive, being the examination of J. H. Watters, held upon Saturday, the nineteenth day of January, 1889. Marked "Exhibit K, E. V. R., special ex."

Counsel for defendants objects to the introduction of this printed testimony on the ground that the witness, J. H. Watters, is living in Cincinnati, and able to testify; and has already testified in this case.

SATURDAY, *January 19th*, 1889—two o'clock p. m.

Met pursuant to adjournment.

J. H. WATTERS recalled.

Direct examination by Mr. WILBY:

Q. Mr. Watters, are you able to state from any investigation you have made, and from such actual knowledge as you may have of the transactions themselves, besides the letters and records in the books

of the Fidelity national bank, how E. L. Harper obtained—if he did obtain—credit for $700,000; $400,000 of it at the First National Bank of New York City, and $300,000 with the Chemical National Bank of New York City? And what those transactions were, and what the entries were, if any, and what the proper entries should have been, for those transactions?

A. Yes, sir; I can answer the question fully, and herewith submit a statement which I have written out, being a statement of the facts connected with the transaction about which you have asked me.

(It is agreed between counsel that the written statement submitted by his witness, in his answer, may be taken as his testimony in answer to the question just propounded to him.)

(Counsel for plaintiff offers all the letters and certificates of deposit, and the entries recited in the answer of the witness—reduced to writing—and it is agreed that copies of the said papers may be used instead of the originals.)

Cross-examination by Mr. RAMSEY:

207 Q. What entries, if any, were made in the books of the Fidelity national bank, showing the transfer of these collaterals to the First National Bank of New York City and Chemical National Bank of New York City?

A. The collateral that was sent to the First National Bank of New York, in all amounted to $113,000, which was the property of the Fidelity national bank. Of this there was no record made. There was, also other collateral sent that was not the property of the Fidelity.

Q. Whose property was it?

A. That I cannot say.

Q. Is there any record on the books of the Fidelity national bank, of the collaterals sent to the First National Bank of New York, or the Chemical National Bank of New York?

A. No, sir.

Q. What entries were made of the three certificates of deposit, to which your statement refers?

A. The certificate marked No. 315, in the certificate book, in its regular order, is marked "canceled." For this there was a certificate issued, signed by Ammi Baldwin, of which I have made a copy and attached to my statement, which is marked "Watters Exhibit L," for $300,000. There is also a record on the back of the certificate book, out of the regular order, stubs of certificates Nos. 497, 499 and 500, with the explanation "Issued to E. L. Harper." The certificate No. 497, had been issued to him, but was never used. These certificates were entered on the same page, in the back part of the certificate book. This was the only record on the books of the Fidelity national bank there in the back of the certificate of deposit book, out of their regular order.

Q. Were you aware at the time of these transactions that there was anything wrong in them?

A. No, sir, I was not.

Q. At what time, if at all, prior to the suspension of the Fidelity bank, were your suspicions aroused as to the transactions of E. L. Harper?

(Question objected to by counsel for plaintiff as incompetent and irrelevant.)

A. I had a knowledge from time to time that there were large amounts carried in the cash items, but as to what those items were, I was never told, and never saw them. The first time I was aware that the bank was in such condition that Mr. Harper could not take care of it, was on the 20th of June, 1887, when the national bank examiner came. I had a talk with Mr. Harper, and asked him if he was able to take care of the cash items, he said that he had done all he could, and that things would now have to take their course.

208 (Objected to by counsel for plaintiff.)

Q. What had been your opinion and belief up to that time as to Mr. Harper's financial condition?

(Objected to by counsel for plaintiff as incompetent and irrelevant.)

A. I believed Mr. Harper to be quite a wealthy man, and able to take care of any obligation that he might have in the bank or outstanding.

By Mr. McDOUGALL:

Q. You were a clerk in the Fidelity bank from the beginning, were you?

A. Before the beginning.

Q. And continued with the bank until it closed?

A. Yes, sir.

Q. During your connection with that bank, what irregularities, if any, do you know of existing in the books of the bank?

(Same objection by plaintiff.)

A. I knew that there was certain items carried at the receiver's desk as cash, that were not cash.

Q. I am speaking of the books of the bank—what other irregularities were there, if any?

(Same objection by plaintiff.)

A. There were no irregularities entered on the books of the bank, except, as I have stated, in the back of the certificate of deposit book.

Q. Then, so far as you knew, the books of the bank were properly kept during the time that you were connected with it?

A. Yes, sir.

Q. And so far as you knew, there were no irregularities in the management, except as you have stated, in reference to the cash items?

A. No, sir.

(Same objection by plaintiff.)

Q. Now, what those cash items were don't appear on the books of the bank?

A. The items themselves do not appear on any book of the bank. The only record of it was on the slips of paper kept by the receiving teller.

Q. Then, the items which you say were irregular, were not items appearing on the books of the bank?

(Same objection by plaintiff.)

A. Only in the total amount, the itemized items themselves do not appear.

Q. But in the total amount on the books of the bank,
209 there was nothing to indicate that they were other than cash?

A. That they were cash items.

Q. What were they called in the books of the bank—cash, or cash items?

A. Cash items.

Q. There was nothing on the books of the bank to indicate what their character was?

A. No, sir. The only record of them was on these slips that I have mentioned, kept by the receiving teller.

Q. Merely papers kept by the receiving teller?

A. Yes, sir; the items themselves were kept in a tin box, and the slips kept was the only record that would tell what those cash items consisted of.

Q. But those were not books—merely pieces of paper?

A. That is all.

Q. And they were slips of paper kept by the receiving teller, or whoever carried them—simply for his own convenience, were they not?

A. And for matter of record in case they might have to be checked up from day to day.

Q. What became of those slips of paper?

A. They are with the receiver now.

Q. Any one examining the books of the bank, and knowing nothing about these slips of paper, would not have found on the books of the bank anything to show any irregularity, would they?

(Same objection by plaintiff.)

A. Are you asking as to a person that was fully versed with the banking business—or some one who would not know—

(Question withdrawn.)

Q. When did you first know that the certificates of deposit were in the certificate book recorded out of their regular order?

A. The first time I knew that was on the morning of the 20th of June, 1887, at about eleven o'clock.

Q. Were they in the book prior to that time?

A. I can't say. They were shown to me by Mr. Powell on that day.

Q. Then, so far as you know, there was nothing on even the certificate of deposit book prior to the 20th of June, to show that these certificates had been issued?

A. I had no personal knowledge of it.

Q. Who had charge of the certificate of deposit book?

A. Miss Josie Holmes.

Q. And you don't know when the entries referring to this $700,000 were made?

210 A. No, sir.

Q. They were probably made on the morning of the 20th of June?

(Counsel for plaintiff object to the question as incompetent and irrelevant, and as being speculation on the part of the counsel for defendants.)

A. I don't know.

Q. Had you anything to do with the issuing of any certificates of deposit?

A. No, sir; and I had never seen them——

Q. I mean with the issuing of any certificates of deposit?

A. I may have issued one or two in the first part of the bank's existence.

Q. Did you keep any record of their being issued?

A. There were other records on the books of the bank.

Q. In those other records of certificates of deposit, do these certificates for the $700,000 appear?

A. No, sir; they do not. The only record of them on the books of the Fidelity national bank is right here on the certificate of deposit book.

Redirect examination by Mr. WILBY:

Q. You have been asked, Mr. Watters, about the record kept of the collaterals sent to the New York banks—either to the First national or the Chemical National Bank of New York City; I will ask you whether or not there was a copy made of the letters enclosing those collaterals, at the time they were sent, in the letter press copy book, if you know?

A. I would have to examine the letter books to see.

Q. Will you do so?

A. Yes, sir.

Q. You don't know, then, whether the letters mentioned in your statement were copied, or not?

A. No, sir.

Q. You don't mean to be understood, then, in your answer to Mr. Ramsey, that no such record was made?

A. Did I say that?

Q. You said that no record was made——

A. On the books of the Fidelity—not on the letter books. I didn't mean the letter books, when I said books.

Q. Well, I mean the letter books, when I say books. Now, will you look upon the letter book and see if there is any record of these letters, press copy or otherwise?

A. Yes, sir; I will look.

Q. You have been asked about the cash items, and have
211 stated that there was a slip upon which those items were kept, giving the character and description of them every day, was there not, at the receiving teller's desk?

A. Yes, there was a slip kept at the receiving teller's desk, but the matter of making up the record was not done every day. That is, all these, other than regular cash items, would not be made up every day, unless there was some change in them; they were made up whenever a change was made.

Q. And the slips were kept with the items themselves in that tin box, of which you have spoken, at the receiver's desk?

A. Yes, sir.

Q. Was that tin box kept open?

A. Well, I can't say as that—I have seen it open.

Q. Any one seeing those cash, or the slips, would have realized what they were?

(Question objected to by counsel for defendants, as incompetent, irrelevant and leading.)

A. If any one had examined the cash items; if they would take the cash items out, and examine them, they would.

Q. You do not mean that the carrying of these cash items was not an irregularity, do you?

(Same objection as above.)

A. It was decidedly irregular.

Q. And anything in your previous answers to the contrary, you do not wish to be understood?

A. No, sir.

Same objection.

Q. Now, I will ask you, Mr. Watters, whether or not there was a record kept in the Fidelity bank, called "Daily statements," in which there was for every day of the life of the bank, a statement of the amount of currency on hand, and of gold—that is, including gold and silver, and, also, a statement of the amount of reserve in the bank; that the bank had on hand?

A. There was a daily statement book, in which was kept the daily condition of the bank; the top of the page stated the amount of gold, silver, legal tender, etc., that is, the money, that was in the possession of the bank.

Q. That is the first thing written in the book, at the top of each page?

A. Yes, sir.

Q. I will ask you whether or not you know of discrepancies between the amount of currency, gold and silver, or reserve, or all of that that appears above that line in that book, from the actual state

of the cash of the bank; and whether or not the report, as in that book, was true according to the actual amount of cash, as dis-
212 tinguished from cash items?

(Objected to by counsel for plaintiff, as incompetent and irrelevant.)

A. The book from beginning to end, in nearly all instances, is incorrect.

Q. When did you know of that incorrectness for the first time?

A. I noticed it from day to day right straight ahead.

Q. Do you call that an irregularity?

A. Yes, sir.

Q. I will ask you whether or not you knew of Chatfield & Woods, and of Mr. Morehead having checks carried in the cash, for the purpose of swelling the deposits of the bank, while they were directors of the bank?

(Same objection by counsel for defendants.)

A. As for what purpose they were deposited, I cannot say, but I know it to be a fact that their checks were deposited and held in cash, and the amount placed to their credit.

Q. Did you know it at the time?

A. Yes, sir.

Q. Did you know anything in reference to a note or a check of Briggs Swift, with which the same thing was done?

A. As for a note being given, I cannot state that, as I never saw it; but there is a record on the books of the bank crediting Mr. Swift with $100,000 and charging call loans, and afterwards charging Briggs Swift, and crediting call loans.

A. Do you know anything, of your own personal knowledge, of what was done on March 16th or 17th, at the time the bank examiner was at the Fidelity national bank, with reference to the cash items, and furnishing currency, to be on hand in case an examination was made?

A. There was some few cash items charged through the account of E. L. Harper or E. L. Harper & Company, I am not sure now which it was. There was also gotten from the Metropolitan national bank, and from the Queen City national bank, $150,000 in currency.

Q. Was it returned to them?

A. Yes, sir.

Q. Do you know that of your own personal knowledge?

A. Yes, sir; I returned the money to the Metropolitan bank, and brought the money up from the Queen City national bank.

Q. Did you speak of this to anybody at the time?

A. I think it was known by every clerk in the bank.

Q. And talked about?

213 A. I think there was mention made of it to some clerks.

Q. Was any mention made of it to the directors, or any of them?

A. I could not say; not that I know of.

Q. Could you say that it was not mentioned to the directors or any of them?
A. No, sir; I could not.

Recross-examination by Mr. McDOUGALL:

Q. Are banks in the habit of borrowing from each other when the bank examiner comes around?
A. Well, I could not say; I have heard it.
Q. Were you connected with any other banks?
A. Yes, sir.
Q. Did they carry cash items the same way as the Fidelity bank did?
A. Yes; they carried some—they carried some at the Third national bank, when I was there.

Re-redirect examination by Mr. WILBY:

Q. When were you with the Third national bank?
A. In 1879 and 1880.
Q. Mr. Baldwin was there then?
A. Yes, sir.
Q. And Mr. Harper was there, in the board, at that time?
A. Yes, sir.

EXHIBIT 1.

(Copy.)

Statement of J. H. Watters.

The Fidelity national bank.

CINCINNATI, O., *Jan. 29th*, 1887.

First national bank, New York city, N. Y.

GENTLEMEN: We beg to confirm our several telegrams of this date, as follows:

"Wire lowest price on three hundred and forty thousand United States fours to be placed with Treasurer to secure our Government deposit. In case we buy and pay for the bonds, will place to our credit, at a low rate, four hundred thousand to count as reserve till we receive our Government deposit. We not to check against the amount. Provided we trade, will give you part of our New York account as per terms of your recent proposition. Our balance now is over four hundred thousand. Answer quick."

Your reply:

214 "Will sell fours at twenty-eight and three quarters, and make loan as requested at three per cent. Answer promptly, as Government market is very strong."

Our second telegram to you:

"Telegram received. We accept, and will take the three hundred and thirty thousand fours at twenty-eight and three-quarters. We understand you to deliver them in Washington at this price. We

remit today. You can place loan to our credit at your rate Monday."

Yours respectfully,

(Signed) E. L. HARPER, *V. P.*

2—(Copy.)

The Fidelity national bank.

CINCINNATI, *Jan. 29th*, 1887.

First national bank, New York city, N. Y.

GENTLEMEN: We send you our first letter for credit today—$435,441.41. Please charge to our account, and forward by first express the $330,000 U. S. four per cents. of 1907 purchased from you today, to the Treasurer of the United States at Washington, D. C., for our account as security for United States deposit of public moneys. Please send with the above the $10,000 we send you from here, making the full amount $340,000.

If it will make no change in your arrangements, you need only deposit for us at present, as a reserve, $200,000 of the loan, and the balance when we wire you we desire it; but if it makes any difference, you can place the whole $400,000 as arranged.

We will receive from the United States about $20,000 per day, after they commence to deposit; but, unless our bonds arrive in Washington by February 1st, we fear another bank here will receive their deposit first.

We trust our account will prove profitable and mutually satisfactory. Thanking you for your promptness, we remain,

Yours respectfully,

(Signed) E. L. HARPER, *V. P.*

3—(Copy.)

The Fidelity national bank.

CINCINNATI, OHIO, *March 17th*, 1887.

First national bank, New York city, N. Y.

GENTLEMEN: We thank you for your promptness in reference to placing the $300,000 to our credit, making $500,000 in all. The bank examiner is going through us today, and we were a little short in our reserve. We had only charged you with the $400,000, as previously agreed, and we gave him our balance with you as $405,982.34; so please make this agree as to date when he writes for our balance.

215

We will credit you the other $100,000 at close today. We are under obligations for your promptness, and we will pay off and give you a good account soon.

Respectfully yours,

(Signed) E. L. HARPER, *V. P.*

4—(Copy.)

NEW YORK, *March* 19, 1887.

Personal.

E. L. Harper, Esq., vice-pres. Fidelity national bank, Cincinnati, Ohio.

DEAR SIR: We note what you say in your favor of the 17th regarding the credit made to your account and your explanation of the purpose for which you desired it. It is proper to say to you that it would not be practicable for us to antedate a credit of this kind. We could not, if we desired, change our daily balances to and including the date designated by you. The best we could do would be simply to state the balance of your account as it appeared on our books at any given date, concerning which inquiry might be made.

We venture to make the suggestion to you that it is in every way better to meet squarely any criticism attaching to a deficient reserve than to endeavor to mend it by a subsequent transaction, which, to be effective, would need to be antedated. Any examination into such a transaction could not fail to be prejudicial to the institution desiring to benefit by it.

Yours respectfully,

(Signed) E. SCOFIELD, *Cashier.*

5—(Copy.)

The Fidelity national bank.

CINCINNATI, *April* 3, 1887.

First national bank, New York city.

GENTLEMEN: In case we pay what we now owe you, would it be agreeable to discount two of our certificates of deposit of
216 $200,000 each, due in 30 and 60 days, secured by our choice bills receivable, with over ten per cent. margin? We will not be borrowers after our additional capital is paid and merchandise moves more freely on opening of navigation. We will thereafter keep good balances. We would only draw a part of the discount and our balance would probably not average below $400,000, but we prefer to have it this way. Your early reply will oblige,

Respectfully yours,

(Signed) E. L. HARPER, *V. P.*

6—(On letter-head, same as Exhibit No. 4.)

It will be entirely agreeable to make the arrangement you propose. As the loan would be, in this case, without restrictions and subject to your check, the rate would be five per cent., which we think a fair one in the present state of our money market.

7—(Copy.)

The Fidelity national bank.

CINCINNATI, *April* 28, 1886.

E. Scofield, Esq., cashier First national bank, New York city.

DEAR SIR: Yours of the 25th inst. is at hand, and in accordance therewith we hand you for credit our two certificates of deposit, Nos. 499 and 500 of $200,000 each, due June 27th and July 2nd, fixed five per cent. Please charge our account with the present loan and hand me statement at close, the 30th inst.

Enclosed herewith, we hand you as collateral to the above:

Riverside Iron & Steel Co., Mar. 28, 1887, 4 mos., $25,000.
Riverside Iron & Steel Co., Mar. 31, 1887, 4 mos., $25,000.
Riverside Iron & Steel Co., Apr. 7, 1887, 4 mos., $25,000.
Swift's iron & steel works, Apr. 26, 1887, 4 mos., $25,000.
Swift's iron & steel works, Apr. 21, 1887, 4 mos., $25,000.
Swift's iron & steel works, Apr. 16, 1887, 4 mos., $25,000.
Swift's iron & steel works, Apr. 12, 1887, 4 mos., $25,000.
E. L. Harper & Co., Apr. 4, 1887, 4 mos., $50,000.
E. L. Harper & Co., Apr. 18, 1887, 4 mos., $50,000.
Wilshire, Eckert & Co., Apr. 14, 1887, 4 mos., $30,000.
Wilshire, Eckert & Co., Apr. 27, 1887, 4 mos., $30,000.
217 Warder, due Sept. 8, 1887, $3,500.
Champion, due Sept. 17, 1887, $4,500.
Champion, due Sept. 26, 1887, $5,000.
Lee, due Aug. 23, 1887, $3,500.
Champion, due Aug. 19, 1887, $5,872.20.
Warner, due Aug. 12, 1887, $3,624.98.
Warner, due Aug. 8, 1887, $4,926.57.
Aultman, due Aug. 15, 1887, $10,000.
Aultman, due Aug. 18, 1887, $10,000.
Aultman, due Aug. 23, 1887, $10,000.
Aultman, due Aug. 29, 1887, $10,000.
Aultman, due Aug. 31, 1887, $10,000.
Warder, due Aug. 7, 1887, $2,000.
Champion, due Aug. 7, 1887, $5,500.
Champion, due Aug. 18, 1887, $3,500.
Champion, due Aug. 8, 1887, $4,280.
Champion, due July 18, 1887, $4,370.
Champion, due July 29, 1887, $5,451.
Champion, due July 5, 1887, $4,300.
Lee, due July 18, 1887, $3,420.

Respectfully yours,

(Signed) E. L. HARPER, *V. P.*

(8.)

(2196.)

Geo. F. Baker, pres. 10-7-'86—10 M.

First national bank.

NEW YORK, *April* 30, 1887.

Fidelity national bank, Cincinnati, Ohio:

Yours of the 28th received and contents noted.

Respectfully yours, E. SCOFIELD, *Cashier.*

We credit your account $400,000 loan at five per cent., as requested. We charge your account balance to debit of special account, with interest at per statement herewith, $501,191.78.

Statement of Mr. Watters as to the Facts Connected with the Transaction of which the Foregoing is the Correspondence.

On February 12th, 1887, E. L. Harper came to me with a charge ticket (copy of which is hereto attached and made a part hereof, marked "Watters Exhibit A"), instructing me to make out a deposit ticket (a copy of which is hereto attached, made a part
218 hereof and marked "Watters Exhibit B"), asking me to place the same to the credit of his account and charge the First National Bank of New York. The entries for the crediting of the same were made by the different clerks in their respective departments, from the charge ticket, and E. L. Harper received a credit for two hundred thousand ($200,000) dollars.

On February 28, 1887, E. L. Harper came to me with a charge ticket (copy of which is hereto attached, made a part hereof, and marked "Watters Exhibit C"), and requested me to make out a deposit ticket (copy of which is hereto attached, made a part hereof, and marked "Watters Exhibit D"), placing two hundred thousand ($200,000) dollars to his credit, and charging the First National Bank of New York. The proper entries for this were made by the different clerks on their respective books from this ticket.

On March 17th, 1887, E. L. Harper came to me and requested me to make out a charge ticket (copy of which is hereto attached, and made a part hereof, marked "Watters Exhibit E"), and instructed me to make out a deposit ticket (copy of which is hereto attached, made a part hereof and marked "Watters Exhibit F"), placing to his credit one hundred thousand ($100,000) — and charging the First National Bank of New York. The proper entries for this were made on the books of the Fidelity, by the different clerks in their respective departments.

These entries, in all, gave E. L. Harper a credit on the books of the Fidelity national bank, of five hundred thousand ($500,000) dollars, and charged to the First National Bank of New York, with a like amount.

When Mr. Harper desired to reduce the loan in the First national bank from five hundred thousand ($500,000) to four hundred thou-

sand ($400,000) dollars, instead of making the proper entries, he entered on the draft register a credit to the First National Bank of New York, a draft No. 2700, on the First National Bank of New York City, for one hundred thousand ($100,000) dollars; this having gone to the credit of the First New York, reduced the charge to them to four hundred thousand ($400,000) — making the total charge to the Fidelity agree in total with the amount in the First National of New York; giving for the same his check on his account with the Fidelity.

This, in fact, had the same effect as if the proper entries had been made.

When the loan to the Fidelity national bank by the First national bank was reduced from five hundred thousand ($500,000) to four hundred thousand ($400,000) dollars, the two certificates of deposit (copies of which are hereto attached, made part hereof, and marked "Watters Exhibit G," and "Watters Exhibit H") were forwarded to the First National Bank of New York.

I also attach hereto a copy of the account of the First National Bank of New York, as it appeared on the books of the Fidelity national bank, marked "Watters Exhibit I."

I also attach hereto and make part hereof, copies of the accounts of the First National Bank of New York City, with the Fidelity national bank, "Special account" marked, "Watters Exhibit J," and "Regular account" "Watters Exhibit K."

From this it appears that when the first loan of four hundred thousand (400,000) dollars was made, all that was placed to the credit of the Fidelity national bank was two hundred thousand ($200,000) dollars. This was done in the following manner: by placing to the credit of the Fidelity national bank, in the regular account, two hundred thousand ($200,000) dollars, and charging as an overdraft in the special account a like amount.

As will be seen from the letter heretofore quoted, Mr. Harper requested that only this amount be placed to the credit of the Fidelity national bank.

On March 17th, 1887, a like entry was made on both accounts for three hundred thousand (300,000) dollars.

On April 28th, 1887, when Mr. Harper requested a new loan of four hundred thousand ($400,000) —, the regular account was charged with the five hundred thousand ($500,000) dollars, and the special account credited with the same amount. And from the two certificates of deposit a new loan was made for four hundred thousand ($400,000) dollars.

The proper entry that should have been made on the books of the Fidelity bank, is as follows:

As there has been an outstanding liability created by E. L. Harper against the Fidelity national bank for four hundred thousand ($400,000) — for which he had not paid any consideration to the Fidelity, and for which certificates of deposit had been issued, instead of crediting his own account with the amount of these obligations, he should have credited bills payable and charged the First National

Bank of New York. The transaction as it was entered gave him a fictitious credit of $400,000.00, to which he was not entitled.

On February 28th, 1887, the following letter was sent to the Chemical National Bank of New York City, by the Fidelity national bank.

220 U. S. depository.

The Fidelity national bank.

Capital, $1,000,000.

CINCINNATI, O., *February 28th*, 1887.

Wm. J. Quinlan, Jr., Esq., cashier Chemical national bank, New York city, N. Y.

DEAR SIR: Enclosed herewith, we hand you for credit, our certificate of deposit, No. 345, for $300,000 with bills as collateral, as follows:

Jung Brewing Co., due June 24, 1887, $25,000.
Jung Brewing Co., due April 24, 1887, 10,000.
Swift's iron & steel works, due May 18, 1887, $25,000.
Swift's iron & steel works, due May 28, 1887, $25,000.
J. W. Wilshire, endorsed by:
J. V. Lewis, due May 28, 1887, $25,000.
J. V. Lewis, June 28, 1887, $25,000.
J. V. Lewis, July 28, 1887, $25,000.
J. V. Lewis, Aug. 28, 1887, $25,000.
Riverside I. & S. works, due May 22, 1887, $15,000.
Riverside I. & S. works, due May 31, 1887, $15,000.
C. Aultman & Co., due May 16, 1887, $10,000.
C. Aultman & Co., due May 20, 1887, $10,000.
C. Aultman & Co., due May 23, 1887, $10,000.
C. Aultman & Co., due May 27, 1887, $10,000.
C. Aultman & Co., due May 31, 1887, $10,000.
Champion Machine Co., due June 1, 1887, $5,500.
Champion Machine Co., due June 1, 1887, $5,378.01.
Champion Machine Co., due June 10, 1887, $4,350.
Champion Machine Co., due June 10, 1887, $4,610.
Champion Machine Co., due June 11, 1887, $5,487.
Champion Machine Co., due June 15, 1887, $5,700.
Champion Machine Co., due June 22, 1887, $5,620.
Champion Machine Co., due June 24, 1887, $5,850.
Champion Machine Co., due July 24, 1887, $4,500.
Champion Machine Co., due July 28, 1887, $5,200.
Champion Machine Co., due Aug. 3, 1887, $5,000.
Champion Machine Co., due Aug. 20, 1887, $4,500.

We desire to keep a large reserve with you, and trust you will make the rate as low as you proposed some time since. Please place the amount to our credit and advise the rate.

Respectfully yours,
(Signed) E. L. HARPER, *V. P.*

221 Accompanying the above letter was a certificate of deposit, a copy of which is hereto attached, made part hereof, marked "Watters Exhibit L."

On March 2nd, 1887, the Chemical National Bank of New York City forwarded to the Fidelity national bank the following letter: On the letter-head of the

Chemical national bank.

NEW YORK, *March 2nd*, 1887.

A. Baldwin, Esq., cashier.

DEAR SIR: Your favor of the 28th inst., has been received. And we credit Fidelity national bank $300,000—and shall be considerate as to rate of interest when the loan is paid—

I presume that you are aware of the very material change in rates within the past 2 or 3 days.—Loans for 60 and 90 days on stock exchange collaterals (R. R. stocks and bonds) which were ruling 4½ per cent. last week, are now 5½ to 6 per cent. I mention this to show you the present condition of the money market.

Respectfully, WM. J. QUINLAN, JR., *Cashier.*

On March 2nd, 1887, Mr. E. L. Harper came to me and requested me to make out a charge ticket crediting his account and charging the Chemical National Bank of New York City with three hundred thousand ($300,000) dollars. (A copy of which charge ticket is hereto attached, made part hereof, and marked "Watters Exhibit M." Copy of the deposit ticket, also, is hereto attached, marked "Watters Exhibit N.")

The proper entries for the charge ticket and the deposit ticket, crediting the account of E. L. Harper, and charging the account of the Chemical National Bank of New York City, were made on the proper books of the Fidelity national bank.

On May 21st, 1887, the Fidelity national bank forwarded to the Chemical National Bank of New York City the following letter:

U. S. depository.

The Fidelity national bank.

CINCINNATI, O., *May 21st*, 1887.

Chemical national bank, New York city.

GENTLEMEN: Enclosed herewith we hand you to hold as collaterals the following bills:

222 H. S. Bundy, demand, $50,000.
Swift's iron & steel works, May 13, 1887, 4 mos., $25,000.
Swift's iron & steel works, May 18, 1887, 4 mos., $25,000.
J. W. Wilshire, Apr. 28, 1887, 5 mos., $25,000.
Riverside Iron & Steel Co., due Sept. 25, 1887, $15,386.35.
Riverside Iron & Steel Co., due Oct. 5, 1887, $15,386.35.
Whiteley, Fassler & Kelley, Apr. 1, 1887, 6 mos., $4,633.07.
Whiteley, Fassler & Kelley, Apr. 1, 1887, 7 mos., $5,343.07.
Whiteley, Fassler & Kelley, Apr. 1, 1887, 8 mos., $3,892.10.

Whiteley, Fassler & Kelley, Apr. 20, 1887, 6 mos., $5,608.09.
Whiteley, Fassler & Kelley, Apr. 25, 1887, 8 mos., $4,413.17.
Whiteley, Fassler & Kelley, May 2, 1887, 5 mos., $5,370.04.
Whiteley, Fassler & Kelley, May 2, 1887, 6 mos., $4,000.00.
Whiteley, Fassler & Keiley, May 2, 1887, 7 mos., $4,890.10.
Whiteley, Fassler & Kelley, May 2, 1887, 8 mos., $4,850.00.
Whiteley, Fassler & Kelley, May 10, '87, 5 mos., $5,640.00.
Whiteley, Fassler & Kelley, May 10, '87, 6 mos., $5,872.00.
Whiteley, Fassler & Kelley, May 10, '87, 7 mos., $5,710.52.
Whiteley, Fassler & Kelley, May 10, '87, 8 mos., $4,200.00.
Whiteley, Fassler & Kelley, May 16, '87, 6 mos., $5,209.20.
Whiteley, Fassler & Kelley, May 16, '87, 7 mos., $5,178.40.
Will you kindly return me the following:
C. Aultman & Co., due in May, five pieces.
Swift's iron & steel works, due in May, two pieces.
Champion Machine Co., due in June, eight pieces.
Jung Brewing Co., due in June, one piece.
J. W. Wilshire, due in May, one piece.
Riverside Iron & Steel Co., two pieces, due in May.
We will pay the loan July 15th, 1887, if agreeable to you, and will pay interest now to that date.

Respectfully yours,
(Signed) E. L. HARPER, *V. P.*

In the transaction above described, instead of the account of E. L. Harper being credited, and the account of the Chemical national bank being charged with $300,000, an account called "Bills payable" should have been credited and the account of the Chemical national bank been charged with this amount of money, as this was an outstanding obligation issued by the officers of the Fidelity national bank; this gave E. L. Harper a fictitious credit of $300,000.

J. HARRY WATTERS.

223 And also WILLIAM BEATTY MCCAUSLEN, recalled on behalf of plaintiff, having been previously sworn, in this case, testified as follows:

Direct examination by Judge WORTHINGTON:

Q. 63. Mr. McCauslen, have you brought with you the stock ledger of the Fidelity national bank?

A. I produce here what I am informed is the stock ledger of the Fidelity national bank; yes, sir.

Q. 64. It is one of the books that has been in charge of the receiver of the Fidelity national bank, ever since its failure, is it?

A. Yes, sir; it is.

Q. 65. And has always been received as the stock ledger of that bank?

A. Yes, sir.

Q. 66. On what pages of that stock ledger, Mr. McCauslen is the account of E. L. Harper, as a stockholder, found?

A. E. L. Harper's account is found on pages 10, 11, 12 and 13 of this stock ledger.

Q. 67. Pages 10, 11, 12 and 13?

A. Yes, sir.

Counsel for plaintiff now offers in evidence the account just referred to, and asks that the examiner makes a copy of the same, attach it hereto and marked it "Exhibit —," it being agreed between counsel on both sides that a copy of same may be used in lieu of the original.

Counsel for defendant interposes an objection as to the competency and relevancy of the account just offered.

Q. 68. On what page is the account of A. P. Gahr, as a stockholder of the Fidelity national bank, found?

A. The account of A. P. Gahr is found on page 16.

The account of A. P. Gahr, as a stockholder, on page 16 of the stock ledger, is offered in evidence by counsel for plaintiff; and it is agreed between counsel that a copy of the same may be used and attached hereto, in lieu of the original, marked "Exhibit —."

Same objection as above interposed by counsel for defendant.

Q. 69. On what page of the stock ledger does the account of J. H. Matthews, as a stockholder, appear, Mr. McCauslen?

A. The account of J. H. Matthews, as a stockholder, is found on page 14, of the stock ledger.

The account just referred to is offered in evidence by
224 counsel for defendant; and it is agreed between counsel that a copy of same may be made, and used, and hereto attached, in lieu of the original, marked "Exhibit —."

At this point the taking of further testimony was adjourned to February third, 1896.

Monday morning, ten o'clock, February 3d, 1896, at the office of David Armstrong, receiver of the Fidelity national bank, in the Masonic temple, Third and Walnut streets, Cincinnati, Ohio, met, pursuant to adjournment.

Present on behalf of plaintiff, Honorable William Worthington.

Present on behalf of defendant, Honorable John W. Herron.

J. HARRY WATTERS, called on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. HERRON:

Q. 1. Mr. Watters, state whether or not you are the same J. Harry Watters who testified before in the present case?

A. I am.

Q. 2. State whose duty it was, if you know, to examine the monthly accounts rendered between the Chemical National Bank of New York and the Fidelity national bank, in the spring of 1887, and explain the manner in which this was done?

A. It was my duty, with the assistance of Edward Hicks. Sometimes I would examine the accounts in full all by myself; or, if I was too busy, Mr. Hicks might have done it at times. I may state here that Mr. Hicks is now dead.

The manner that we pursued in examining or checking up an account current is as follows: We would take our charges and checks with the credits that appeared on the account-current sheet of the bank forwarded to us; and the same way with the charges and our credits. Then, if there were any items that did not check, they would be so entered on our reconcilement sheet, with our balance and their balance, which would make the reconcilement sheet balance in itself.

Q. 3. What book of the Fidelity national bank would you
225 have, to compare the charges and credits between the two accounts?

A. The general book-keeper's journal and the draft register.

Q. 4. Refer to the account current rendered by the Chemical national bank for the month of March, 1887, referred to in your former evidence as "Watters Exhibit No. 10," and state who made the checks to the items on said account?

A. Ed. Hicks.

Q. 5. Mr. Watters, can you now state, in the reconcilement of the account, as to who had the account rendered by the Chemical national bank, and who examined the books of the Fidelity national bank?

A. I cannot state positively. I know that these check-marks are in Ed. Hicks' handwriting—that is the reason I know that he checked this.

I want to change my answer to your question as to what book of the Fidelity I had before me in comparing the two accounts, where I answered the general book-keeper's journal. I have now before me what was known as the "book of the Chemical National Bank of New York," containing all the debits and credits, except the drafts; and from this book the debits and credits were checked on to the account current, except the drafts, and they were checked from the draft register. These are all my check-marks here. I find, by looking at this book, that I recognize my own check-marks, and I must, then, at that time, have called off to Mr. Hicks the debits and credits.

Q. 6. Is that part of the Fidelity's books?

A. It is; yes, sir.

Q. 7. When was that book prepared?

A. During the existence of the Fidelity bank.

Q. 8. Well, when in reference to the month of March?

A. From day to day, as the business was conducted.

Q. 9. And the check marks in that book are made by you?

A. Yes, sir.

Q. 10. And the check-marks on the account are made by Hicks?

A. Yes, sir.

Q. 11. Read from that book the item of three hundred thousand ($300,000.00) dollars, about which this controversy has arisen.

A. On page 78 of this book, under date of March 2nd, is a charge to the Chemical national bank, "transfer of funds, $300,000.00."

226 Counsel for defendant offers in evidence the book from which witness has been reading; and the same is marked "Watters Exhibit A. E. V. R., special examiner."

Q. 12. Mr. Watters, state what present recollection you have as to whether at that time you noticed on the account of the Chemical national bank, in front of the item of $300,000.00, the words "tem. loan"?

Question objected to by counsel for plaintiff.

A. I cannot say now that I remember at the time this account was checked, that I noticed particularly the item "tem. loan;" but at some time—whether at that particular time, or at the present time, I have always mistaken this word "tem. loan" as "time loan."

Answer objected to by counsel for plaintiff, in so far as it is responsive to the question, for the reason that the question is objected to; and to the latter part of the answer as to the witness having mistaken the words "tem. loan" for "time loan," as irrelevant and immaterial.

Q. 13. State in what manner that item, on the Chemical National Bank's account, of $300,000.00 first appeared on the books of the Fidelity national bank; and what knowledge you had at the time you saw the credit on the Chemical account as to its correctness.

Question objected to by counsel for plaintiff, on the ground that the matter has been heretofore examined into; and is not within the scope of the——

A. This item appeared first on the books of the Fidelity national bank, on the date of March 2nd, in the shape of a charge to that bank; which entry was made from a charge ticket which read, "Credit E. L. Harper, transfer of funds, charge Chemical national bank." If I remember rightly, I made out this charge ticket myself, at the instruction of Mr. Harper.

Q. 14. You have not answered the last part of my question, as to what knowledge you had at the time you saw the credit on the Chemical account as to its correctness.

A. I cannot say that at that time I did see the account current of the Chemical national bank; for, as I explained before, I checked the debits and Hicks checked the credits, but during the course of checking, this item was checked off between us.

Q. 15. At that time, however, you knew, did you not, that that sum had been charged to the Chemical national bank and credited to E. L. Harper on the books of the Fidelity national bank?

Question objected to by counsel for plaintiff.

A. I did.

227 Q. 16. If, at the time you examined the account current of the Chemical national bank, Mr. Watters, you had noticed

the words, "tem. loan," with your previous knowledge of the manner in which that item had appeared on the Fidelity's books, what impression would such information have made upon your mind, as the book-keeper of the Fidelity national bank?

Question objected to by counsel for plaintiff as immaterial and irrelevant.

A. Having previously made the entry crediting Mr. Harper, and charging the Chemical national bank, I would have checked this item as I did, without any hesitancy, and, as I supposed at that time, that it was a loan of Mr. Harper's. For the entry that I had made would indicate that to me.

Counsel for plaintiff objects to the answer.

Q. 17. Had you, or not, at that time, or any subsequent time prior to the failure of the Fidelity national bank, any knowledge or belief that the Fidelity national bank had borrowed of the Chemical national bank three hundred thousand ($300,000) dollars?

Question objected to by counsel for plaintiff as incompetent and irrelevant.

A. I did not.

Q. 18. State whether or not, at that, or any subsequent time prior to the failure of the Fidelity national bank, you informed either any officer or director of that bank that a charge of three hundred thousand ($300,000) dollars, on the books of the Fidelity national bank, was marked as a temporary loan to the Fidelity national bank, or that any such words appeared in the account rendered?

Question objected to by counsel for plaintiff.

A. No, sir; I did not.

Q. 19. Mr. Watters, in your testimony given in the directors' suit, you have appended as a part of your evidence copies of letters written by Mr. Harper to Mr. Quinlan, dated February 28th, 1887; and Mr. Quinlan's reply, and a subsequent letter of Harper to Quinlan. I will now ask you where you obtained those copies when you first had knowledge that they existed?

A. I got them from the books of the Fidelity, which were in the possession of the receiver, after the failure.

Q. 20. Was that first letter in his books?

A. Well—I can't say now—which first letter?

Q. 21. The one written by Harper to Quinlan.

A. I don't know where I did get them. It was either there, or I got copies of them—but I don't know where they come from. I am not sure whether these are the copies furnished the receiver by the Chemical national bank or not.

228 Q. 22. I will refer you to your previous testimony in this case, and I will ask you whether that will refresh your memory as to those facts. (Handing book to witness.)

Objected to by counsel for plaintiff.

A. I read in the testimony that I have stated here that I did not

find a copy of the letter in the books of the Fidelity national bank. Whether this is the fact or not, I cannot state now.

Q. 23. At that time, however, you had examined the books of the Fidelity national bank; have you examined them since then?

Question objected to by counsel for plaintiff.

A. I have not examined them since then; no, sir.

Cross-examination by Judge WORTHINGTON:

Q. 1. Mr. Watters, are you the same J. Harry Watters who testified in the case of David Armstrong, receiver of the Fidelity national bank *vs.* Briggs Swift and others, case No. 4054, in the United States circuit court for the southern district of Ohio, and whose testimony is given on pages 578 to 579 of the printed record of the testimony in that case?

A. I am.

Q. 2. Mr. Watters, what was the position in the Fidelity national bank of Edward Hicks, who assisted you in checking off the amount between the Fidelity national bank and the Chemical national bank?

A. He was one of the assistant general book-keepers.

Q. 3. A subordinate under you?

A. Yes, sir.

Q. 4. As a matter of general usage, was he the person who assisted in checking off the monthly accounts of the Chemical national bank?

A. He assisted me with all the accounts; and whether he assisted me with the Chemical always, that I cannot say.

Q. 5. Was it your practice in such cases, for you to have before you the account as kept by the Fidelity national bank, and for Mr. Hicks, or the other person who assisted you, to have the account as rendered by the corresponding bank, as you have testified was done with reference to this March account; or would they vary according to your convenience?

A. Yes, it would vary according to the convenience, or the time which one of us had. Sometimes I would call to him, and sometimes he would call to me; and sometimes one of us would check the whole account by ourselves—that is, checking off the bank accounts. The different ones would assist—it would not always be Mr. Hicks.

229 Q. 6. From an inspection of this exhibit heretofore offered in this case, marked "Watters Exhibit No. 10," are you able to state whether or not it was necessary to make any reconcilement sheet for that account, for that month?

A. I cannot state now whether a reconcilement sheet was made or not.

Q. 7. I understand, then, that there is nothing there upon the face of the account, as kept in the Fidelity national bank, or as furnished to the Fidelity national bank by the Chemical national

bank, that enables to tell whether a reconcilement sheet was made out for that particular month?

A. No, sir.

Q. 8. Mr. Watters, look at the papers I now hand you, heretofore offered in evidence in this case, and marked by the examiner, "Reconcilement sheet for Chemical national bank, March, 1887, Effie V. Ryan, special examiner," and state whether or not you recognize that as being the reconcilement sheet between the Chemical national bank and the Fidelity national bank for the account of that month?

A. Yes, sir; it is.

Q. 9. Can you tell me in whose handwriting that reconcilement sheet is?

A. That is in the handwriting of Edward Hicks.

Q. 10. Do you recognize from the character of the check-marks who it was that made them?

A. Not now, I can't; no, sir.

Q. 11. You spoke about the others, and I didn't know but maybe there was something in the pencil, or something else, by which you could identify them here as well as in the other two accounts. How is it that you are able to recognize the check-marks upon the book of the Fidelity national bank in which the amount was being made by you, and upon the Chemical National Bank account as made by Mr. Hicks?

A. On the account-current sheet, as made by Mr. Hicks, are his pencil figuring and writing that I recognize as Hicks' work; while in the book, as near as I can state, I think they are my check-marks. But I would not want to take a very strong oath and have to rest on what I would state, because I might be mistaken.

Q. 12. Your statements to that effect, then, have been from a process of reasoning from the pencil figures and letters that appeared upon the account as furnished by the Chemical national bank?

A. That's right; yes, sir.

Q. 13. The words at the foot of this sheet, marked "Reconcilement sheet for March, 1887," on the right-hand side, "To balance
230 account .51" are in Mr. Hicks' handwriting, are they?

A. Yes, sir.

Q. 14. With reference to explaining this reconcilement sheet, Mr. Watters, the words "We charge" mean that the Fidelity National Bank books charge; and "We credit," shows that the Fidelity credits, and, *vice versa*, "You charge" means that the Chemical charges, and "You credit" means that the Chemical credits? In other words, "We" means the Fidelity, and "You" means the Chemical bank?

A. Yes, sir.

Q. 15. And that, of course, was uniform in all of the reconcilement sheets?

A. Yes, sir. Under the item of "We charge;" that would be the Fidelity charges and the Chemical does not credit. Under the item "We credit" would be that the Fidelity credits and the Chemical does not charge. Under the item "You charge" would mean that

the Chemical charges, and the Fidelity does not credit. Under the item "You credit" would mean that the Chemical credits, and the Fidelity does not charge. Then after putting together these four items, together with the balance of each bank the reconcilement sheet would balance as explained before.

Q. 16. In other words, the reconcilement sheet is intended to show amounts that are not charged or credited upon both accounts?

A. Yes, sir.

Q. 17. As a corresponding charge and credit?

A. Yes, sir.

Q. 18. Mr. Watters, I hand you now a paper previously offered in evidence in this case, and marked "Reconcilement sheet for April, 1887, E. V. R., special examiner," and ask you whether you recognize that as the reconcilement sheet between the Fidelity national bank and the Chemical national bank, prepared in the Fidelity national bank, of their account for the month of April, 1887?

A. I do.

Q. 19. That is in whose handwriting?

A. Edward Hicks.

Q. 20. And the explanation you have made with reference to the March account applies, I presume to that, with the necessary change for the months?

A. Yes, sir.

Q. 21. I hand you now a paper heretofore offered in evidence in this case, and marked "Reconcilement sheet for May, 1887,
231 E. V. R., special examiner," and ask if you recognize that as being the reconcilement sheet prepared by the Fidelity national bank as the account between the Fidelity and the Chemical for the month of May, 1887?

A. Yes, sir; I do.

Q. 22. In whose handwriting is it?

A. Edwards Hicks.

Q. 23. I hand you, also, a paper heretofore offered in evidence in this case, and marked "Reconcilement sheet for June, E. V. R., special examiner," and ask you if you recognize that as the reconcilement sheet prepared in the Fidelity national bank, as the account between the Fidelity national bank and the Chemical national bank for the month of June, 1887?

A. I do.

Q. 24. That is written by whom?

A. This was prepared by Mr. Hicks, and is all in his handwriting. But you will find in lead pencil names written which are in the handwriting of John T. Colling.

Q. 25. The lead-pencil names and figures that you speak of are upon the third and fourth pages of the sheet?

A. Yes, sir.

Q. 26. And with reference to that part of the sheet which gives the drafts outstanding?

A. The number of the draft, the date it was drawn and the name of the party *to* (on) whom it was drawn, is all in the handwriting of

John T. Colling; and, to the best of my recollection, was done after the failure of the Fidelity national bank.

Q. 27. The figures in ink, however, were they, or not, prepared at the time that the reconcilement sheet was made?

A. Yes, they were prepared at the time, and done by Hicks.

Q. 28. I hand you another paper, Mr. Watters, already offered in evidence in this case, consisting of two sheets pinned together, and marked "Letter as to reconcilement of April account," and ask you if you recognize that paper?

A. I do.

Q. 29. In whose handwriting is it?

A. The letter written to Mr. Quinlan is in the handwriting of Mr. Hicks, and on the sheet afterwards returned by the Chemical national bank to the Fidelity, is the answer to this letter, and is written in the handwriting of some one connected with the Chemical national bank, I suppose, for it is signed "W. J. Quinlan, Jr., cashier."

232 Q. 30. This letter bears upon it the stamp "Fidelity national bank, per Watters"——

A. Yes, sir.

Q. 31. This letter was written by Mr. Hicks under your direction, then?

A. Yes, sir; and the reason my name appears on there is that we wanted the letter, when returned to the Fidelity, to be returned to my desk.

Q. 32. I hand you another paper, which has been offered in evidence heretofore in this case, and marked "Letter as to differences in May reconcilement, E. V. R., special examiner," purporting to be written by the Fidelity national bank to the Chemical national bank, and to be signed by Hicks, with a notation at the end, which has been testified to have been made in the Chemical national bank, and ask you if you recognize that document?

A. Yes, sir; I do. It is in the handwriting of—this is made by Hicks, and was returned to the Fidelity national bank by the Chemical national, in the writing of some of the clerks of that institution.

Q. 33. Look, also, at another document, which I show you, which I now hand you, heretofore offered in evidence in this case, marked "Armstrong letter to Chemical, July 12th, 1887," and state if you recognize that?

A. I do; yes, sir.

Q. 34. By whom was that written?

A. Edward Hicks. The lead-pencil notations are those of some one in the Chemical national bank.

Q. 35. Mr. Hicks was, at that time, in the employ of the receiver of the Fidelity national bank?

A. Yes, sir.

Q. 36. Look at this other document, which I now hand you, which has been heretofore offered in evidence in this case, and marked "Attempted reconcilement of June account, E. V. R., special examiner." Do you recognize that?

A. Yes, sir; I do. It is in the handwriting of Ed. Hicks.

Q. 37. All of these letters that I have shown you were written by Mr. Hicks, under directions from you, were they, Mr. Watters?

A. In a general way. I can't say that I directed him exactly what to say; but if he helped me with the reconcilement, he would put down what was necessary; and if he checked the entire account by himself, he sent this off without consulting me at that time.

233 Q. 38. Do you recollect whether you assisted in making the reconcilement sheet for the month of April? Please look at the book before you and see whether or not you did assist in making the reconcilement for the months of April, May and June, or any of them?

A. From the books there is nothing that would tell me that I have assisted, excepting the check-mark; and, as I stated before, these check-marks are like the ones I generally make; but whether they are mine I cannot possibly state.

Q. 39. Mr. Watters, do you mean us to understand that you, as a book-keeper, seeing an account rendered by one bank to another in which the bank rendering the account credits the bank to whom the account is rendered with three hundred thousand dollars ($300,000.00), a loan from the rendering bank to the other bank, that you would assume that that did not mean a loan, and that it was not the intention to charge a loan?

Question objected to by counsel for defendant on the ground that it assumes to be true what is not the fact.

A. I don't think the question is put just right——

Question withdrawn and changed to:

Q. 40. Mr. Watters, supposing that you had no previous knowledge of the transactions between the Chemical national bank and the Fidelity national bank, or the officers of the Fidelity, or directions that they had given to their employés, do you mean to tell us that if you were shown such an account as appears in "Watters Exhibit No. 10," being an account in which the Fidelity national bank is debtor and the Chemical national bank is creditor, and upon the credit side of the account there appears the item "tem. loan, $300,000.00," that you, as a book-keeper, would understand that to mean anything else than that the Chemical national bank was crediting itself with having made a loan of that sum to the Fidelity national bank?

(Mr. Herron leaves at this point to take the train for Columbus.)

A. In checking up the March account between the Fidelity national bank and the Chemical national bank, it would be necessary for me to have a complete record of what the Fidelity books were, and the account current of the Chemical national bank; and if I came across, on the debit side of the Fidelity, an item reading "transfer of funds," and on the Chemical national bank account an item reading "tem. loan," I would be all at sea. I wouldn't know what it meant; whether it had been an individual loan to

one of the directors, or a loan to the bank, or as the explana-
234 tion says in the Fidelity books, "transfer of funds," that somebody interested had transferred over to the Chemical for the credit of the Fidelity a certain sum of money. No book-keeper could come to an understanding by having both explanations before him, what the exact meaning of the entry was.

Q. 41. You haven't answered my question, Mr. Watters. My question was: Supposing that you had no knowledge of the entries as they stood upon the books of the Fidelity national bank, or as to direction given by the officers of the Fidelity national bank to their clerks—but you were simply shown that account which is now in your hands—whether it could make more than one impression upon you, as a book-keeper, as to its meaning?

A. I misunderstood your other question, was the reason I answered as I did. Well, if this account was shown me, as a book-keeper, and I would find and read here the words "tem. loan $300,000.00," and I had no previous knowledge—the large amount would naturally indicate to me that a loan had been made by the Chemical national bank; but whether to the Fidelity national bank, or to one of its directors—that I could not tell from the explanation here.

Q. 42. Mr. Watters, if the loan had not been made to the Fidelity national bank, if it had been made to some person else, why should it be charged as a loan to the Fidelity national bank?

A. That could be very easy. If, for instance, one of the members of the Fidelity, or if some one outside of the Fidelity, not a director, should borrow from the Chemical national bank, and say to them, "Be kind enough to place to my credit in your bank for my use in the Fidelity national bank," a similar entry would have been made to this, but the exact explanation as down here would not be as we have it on this paper.

I think I can make that more clear. Say, for instance, a member of the Fidelity national bank would borrow, individually, from the Chemical national bank, and state in his letter of instruction to place to the credit of the Fidelity national bank the sum that he had borrowed, the same entry would have been made.

Q. 43. The transaction which you suggest, if I understand you, Mr. Watters, is this: That an individual would borrow from the Chemical national bank a certain sum of money, and instruct the Chemical national bank to place that sum to the credit of the Fidelity national bank?

A. Yes, sir.

Q. 44. Now, do I understand you to say that it would be
235 proper book-keeping for the Chemical national bank, in such instance, in rendering its account to the Fidelity national bank, to note such a credit as if it were a loan directly from the Chemical national bank to the Fidelity national bank?

A. No, sir; I say that the entry would be the same. The explanation would have been different.

Q. 45. Well, Mr. Watters, when it appears on the account rendered by the Chemical national bank to the Fidelity national bank as a

"tem. loan," does not that signify necessarily a temporary loan from the Chemical national bank to the Fidelity national bank?

A. Yes, sir.

Q. 46. Are you not mistaken, then, in saying that such an entry as that would be made if the loan was not to the Fidelity national bank?

A. Well, as I explained, the difference would be in the explanation. The entry would be the same.

Q. 47. You mean that the figures would be the same, but not the same marginal note?

A. No, sir; I don't say that, either.

Q. 48. You mean, then, that the same amount of dollars would be placed in the same column?

A. Yes; and the same transaction would be gone through, except the explanation would be different.

Q. 49. And the difference in the explanation is in these words, "tem. loan"?

A. Yes; for instance, if I borrowed it individually, it would be "tem. loan. Watters."

Q. 50. But as it stands it signifies a loan by the Chemical national bank to the Fidelity national bank and nothing else, does it not?

A. Yes, sir.

Q. 51. Mr. Watters, you have stated that you made no statements at any time prior to the failure of the Fidelity national bank regarding this entry, to Mr. Harper or any of the other directors of the Fidelity national bank, if I understand you, regarding this particular entry of "tem. loan, $300,000.00" on the March account.

A. No, sir; I know that I did not.

Q. 52. Were you in the habit of making communications to any of the directors, aside from Mr. Harper?

A. No, sir.

Q. 53. Mr. Watters, who was the managing officer of the Fidelity national bank?

A. Edward L. Harper.

Q. 54. Who controlled all the affairs of the Fidelity national bank?

A. Mr. Harper.

236 Q. 55. Did any of the other officers attempt to supervise Mr. Harper's actions?

A. Not to my knowledge.

Q. 56. If they had done so, were you in a position to have observed it?

A. No, sir.

Q. 57. What was your position?

A. I was general book-keeper.

Q. 58. And as general book-keeper, what were your duties, Mr. Watters?

A. Keeping the bank accounts and reconciling accounts, and assisting at desks where my services were necessary——

Q. 59. Sort of a general utility man?

A. Yes, sir.

Q. 60. Mr. Watters, can you tell us whether the other directors permitted Mr. Harper to run the Fidelity national bank in the manner in which he thought best for its interests—or in the manner he thought best?

A. I believe they did. Although I have heard of some controversy between him and Mr. Kineon, I think it was at one time; and, also of some controversy between him and Mr. Alter, I believe.

Q. 61. The controversy between him and Mr. Kineon—do you recollect when that was—when that occurred?

A. I think that was in May, 1887.

Q. 62. Just shortly before the bank's failure?

A. Yes, sir.

Q. 63. And resulted in Mr. Kineon's leaving the directory of the bank, didn't it?

A. Yes, to the best of my knowledge, it did.

At this point of the taking of further testimony was adjourned to Monday morning, February 10, at 10 o'clock.

MONDAY MORNING, *February* 10, 1896.

Met pursuant to adjournment, but no testimony taken, and further adjourned to February 24th.

MONDAY MORNING, *February 24th*, 1896.

Met pursuant to adjournment, no testimony was taken and further adjourned to May 4th, 1896.

MONDAY MORNING, *May 4th*, 1896.

Met pursuant to adjournment, in room 310 Government building.

237 Before Effie V. Ryan, special examiner.

Present: Honorable William Worthington, on behalf of plaintiff.

Present: Honorable John W. Herron, on behalf of defendant.

JAMES H. MATTHEWS, called on behalf of defendant, being first duly sworn, testified as follows:

Direct examination by Mr. HERRON:

Q. 1. Mr. Matthews, state what, if any, relation you had to the Fidelity National Bank of Cincinnati, during the year 1887?

A. I was a director of the bank during 1887.

Q. 2. State what knowledge you had, at any time, of a pretended loan of three hundred thousand ($300,000.00) dollars by the Chemical National Bank of New York to the Fidelity National Bank of Cincinnati, made in February, 1887?

A. I do not remember that it ever came under my notice during a meeting of the board of directors.

Q. 3. When did you first hear of it?

A. I think after the failure; during the court proceedings.

Cross-examination by Judge WORTHINGTON:

Q. 1. Mr. Matthews, did you state when you first became a member of the board of directors of the Fidelity national bank?

A. No, sir; I did not state.

Q. 2. Do you know how many meetings of the board of directors you attended, Mr. Matthews?

A. I am not able to say Judge. You will have to depend upon the record for that; but I attended quite a number. I don't think I missed any—or, probably, not more than one during the time I was a director.

Q. 3. Mr. Matthews, you said something a little while ago, off the record—which did not go down in the stenographic report—something about your directorship being nominal. Will you just explain what you meant by that?

A. Yes, sir. It was understood between Mr. Harper and me—and I think the same is true as to Mr. Gahr—that we were to be directors only until others were found to take our places; and, in explanation, I will say that at one time Mr. Harper told us that one of us would have to step out—that one of us would have to
238 resign—as directors, to allow somebody else to supply the place; and I know Mr. Gahr and I tossed coppers to see which of us would withdraw.

Q. 4. By "Mr. Harper" you mean Edward L. Harper, the vice-president of the Fidelity national bank, do you, Mr. Matthews?

A. Yes, sir.

Q. 5. What relation to you was E. L. Harper?

A. He married a sister of mine.

Q. 6. The stock in the Fidelity national bank, Mr. Matthews, which stood in your name, did it belong to you, in fact?

A. There were ten shares that Mr. Harper gave me; the balance belonged to him.

Q. 7. The ten shares qualifying you as a director, then, he made you a present of?

A. Yes, sir.

Q. 8. Do you recollect when was the first meeting of the board of directors that you attended, Mr. Matthews?

A. No, sir; I do not recollect that.

Q. 9. Do you recollect about when, with reference to the failure of the Fidelity national bank, for example?

A. No, I could not even approximate it. My memory has failed to retain those dates, Judge.

Q. 10. Then you could not tell us whether or not you attended any meeting of the board of directors prior to—say the twentieth of February, 1887, before the failure of the bank?

A. I am under the impression that I did.

Q. 11. Do you recollect testifying in the case that was brought against the directors of the Fidelity national bank, Mr. Matthews—the case brought by Mr. Armstrong, receiver of the Fidelity national bank *vs.* Briggs Swift and others, directors of the Fidelity, in which Miss Ryan was the special examiner, and took the testimony?

A. Yes; I believe I do.

Q. 12. Do you recollect, at that time, stating that you only attended three or four meetings of the board of directors?

A. No, sir; I do not recollect that; but my answer at that time is probably truer than I could answer now.

Q. 13. Mr. Matthews, I will call your attention to a passage from your testimony in that case, which appears at page 496 of the printed record in that case your evidence beginning on page 480. I will ask you if you are the same James H. Matthews who appears to have been there sworn and testified?

A. Yes, sir.

239 Q. 14. Now, I will ask you—on page 496, of that record appears the following: "Q. Had you ever any conversation with Mr. Harper on the subject of your becoming or being or continuing a director? A. Mr. Harper told me when I was put in there that it would be only for a time."

A. That is right; yes, sir.

Question continued: "Q. Do you remember when that was? A. No, sir; at one time I resigned, to make room for another party."

A. That's true.

Question continued: "Q. For whom? A. I don't remember now. Q. How often were you at the directors' meetings? A. I think I was there about three or four times."

Now, Mr. Matthews, do you recollect—does that refresh your memory at all as to how many times you attended the directors' meetings?

A. I think that is more likely to be correct than any answer I could give now. I ought to have referred to the minutes of the meetings of the board of directors, in order to say positively.

Q. 15. Now, Mr. Matthews, all that I understand you to say with reference to this matter of the loan of three hundred thousand dollars ($300,000.00), in February, 1887, is that it was not mentioned at any meeting of the board of directors at which you were present?

A. I have no recollection of it ever coming up at any meeting of the board of directors at which I was present.

Q. 16. Was the subject of the manner of the management of the bank by Mr. Harper ever discussed at the meetings of the board of directors when you were present, Mr. Matthews?

A. I recall one instance, particularly, at which Mr. Kineon sold his stock—I was present at that meeting.

Q. 17 That was in May, was it, shortly before the bank failed?

A. Yes; that was shortly before the bank failed.

Q. 18. And that was the occasion on which Mr. Kineon was trying to see the discount book—to see the discounts?

A. He wanted to have a committee appointed to examine the discounts is my recollection of it.

Q. 19. And Mr. Harper objected?

A. He said that there was already a committee.

Q. 20. That is the only occasion which you remember?

A. That is the only distinct recollection I have of any controversy at the meetings——

Q. 21. Well, Mr. Matthews, I am not speaking of contro-
240 versy, but of discussion as to what loans were made, and to whom they were made, or what proceedings were taken, and as to running the bank, etc.?

A. That is all I can recall in regard to that.

Q. 22. Mr. Harper was the executive officer of the bank and in control of it, was he not?

A. I believe so. All my dealings were through him.

Q. 23. You represented Swift's iron and steel works at that time?

A. Yes, sir.

Q. 24. And for that company had large dealings with the bank?

A. Yes, sir.

Q. 25. And they were all with Mr. Harper, you say?

A. Yes; I did not go to Mr. Harper, you say?

A. Well, I did not go to Mr. Harper each time there was anything to be done, but I knew that he had given instructions—I knew that instructions had to be given, to take charge of my affairs, as I endeavored to put them through.

Q. 26. Do you know that he gave instructions to that effect?

A. I know that there was no opposition to them going through.

Q. 27. Whatever banking business you had to do, in the way of having instructions given, in order to have your affairs go through, as you say, was through Mr. Harper?

A. Yes, sir.

Q. 28. Were the instructions that Mr. Harper gave with reference to such matters ever discussed in the meetings of the board of directors of the bank?

A. Not in my presence, no sir.

Q. 29. Mr. Matthews, what were the matters which you applied to Mr. Harper to give instructions about?

A. On the subject of discounts, I think, was the principal one; and, probably, the carrying of those checks.

Q. 30. What do you mean, Mr. Matthews, by "the carrying of those checks"?

A. They held some of the checks of the Swift's iron & steel works in the cash, from one day to another.

Q. 31. Do you recollect how long the Fidelity national bank had been in the practice of doing that, how long before its failure?

A. No, sir; I could not tell you how long—but through a period of time.

Q. 32. Well, I want to get at whether it was a matter of one month before the failure, or six months before?

A. I think it was longer than one month; but I would not
241 say that it was six months—I would not like to say it was six months, from my memory; but it might have been that.

Q. 33. Was that all the time, Mr. Matthews, or did it occur during the whole period that you were a director?

A. I don't believe that it was necessary during all that period—no, sir.

Q. 34. Do you recollect what was the gross amount, in dollars, of

the checks that were thus held over as cash, Mr. Mathews? I do not mean for each day, but I mean on an average?

A. I think that they very frequently reached from sixty to seventy thousand ($60,000.00 to $70.000.00) dollars.

Q. 35. Did they not exceed that greatly?

A. Some days, I expect, they did.

Q. 36. Didn't they come up as high as four hundred thousand ($400,000.00) dollars, Mr. Matthews?

A. In one day?

Q. 37. Yes; in one day.

A. No, sir; I don't remember that they did. I know that there was a loan account, and those checks were carried. I expect they aggregated about that amount.

Q. 38. Did you ever hold over checks in any other bank besides the Fidelity, Mr. Mathews, checks of Swift's iron & steel works?

A. I believe not: no, sir.

Q. 39. Now, Mr. Mathews, I will call your attention to page 494 of the printed record in the directors' case, and ask you to look over the testimony there given by you, and see if that refreshes your memory at all on this subject?

A. (After reading the testimony referred to.) This refers to the 18th of June, in which I said that according to our books, there was about four hundred thousand dollars of checks of the Swift's iron & steel works.

Q. 40. Yes. Well, read on down the page.

A. (After doing so.) Well, I will try to answer your question now, Judge.

Q. 41. Now, as to the amount of checks, in dollars, that were held over as cash by the Fidelity national bank, without depositing them for collection, and as to the period of time during which this continued—if your memory is refreshed by having read over your former testimony on this subject?

A. After refreshing my memory, I believe that the amount was, approximately, four hundred and fifteen thousand ($415,000) dollars, the latter part of June, 1887.

Q. 42. And as to the period of time during which this business had been continued?

242 A. I can only go by my former testimony; three or four months, it says there in the printed record.

Q. 43. I will call your attention to a question and answer on page 495 of the printed record, the previous examination having been as to the arrangement had with Mr. Harper for holding these over. "Now, leaving that, for how long a time had the checks of the Swift's iron & steel works been deposited with the Fidelity national bank, and the Swift's iron & steel works got credit at the bank, and drawn money on, and for those checks which came under that agreement or arrangement between yourself and E. L. Harper?"

"A. For several months—I don't know just how long."

Do you recollect having given that testimony, Mr. Mathews, at that time?

A. Yes, I believe that testimony is correct.

Q. 44. Do you recollect how long a period of time that "several months" covered?

A. No, sir; I have nothing to guide me in fixing that.

Q. 45. Now, all of that business was done by Mr. Harper, I understand you, without consulting with any other of the members of the board of directors—the business of instructing the subordinates to carry, as cash, checks of the Swift's iron & steel works to the amounts which you chose to leave there for that purpose?

A. Yes, I think all the instructions came from Mr. Harper. I know I gave no instructions.

Q. 46. It was not a matter about which Mr. Harper consulted the board of directors?

A. Not in my presence, no.

Q. 47. So far as your knowledge goes?

A. No, sir.

Q. 48. Prior to the time at which Mr. Kineon sold out his stock, was there ever any discussion in a meeting of the board of directors as to what loans or discounts should be made and as to an examination of them? What I want to get at, and possibly I ask it in a shorter way, is whether the board of directors themselves discussed the policy of the bank in making loans, and gave directions to Mr. Harper, or whether they trusted Mr. Harper to manage the bank in such a manner as he thought was most conducive to the interests of the stockholders?

Question objected to by counsel for defendant.

A. I remember several instances which I cannot now detail, where questions came up for discussion in the board of directors of, probably, minor matters, for instance, extending lines of credit to other parties, etc. But I am under the impression that most of the business of the bank was done by Mr. Harper direct; as I did not hear much of that.

243 At this point an adjournment was had until Tuesday morning, May 5th, 1896.

TUESDAY MORNING, *May 5th*, 1896.

Met pursuant to adjournment, at the office of Hon. John W. Herron, United Bank building, Cincinnati, Ohio.

Present, Hon. John H. Herron, on behalf of defendant.

And also, HENRY POGUE, called on behalf of defendant, being first duly sworn, testified as follows:

Direct examination by Mr. HERRON:

Q. 1. State your name, residence and occupation?

A. Henry Pogue, Cincinnati; merchant.

Q. 2 Mr. Pogue, state what connection, if any, you had with the Fidelity National Bank of Cincinnati, during the years 1886 and 1887?

A. I was a director of the bank during that time.

Q. 3. During the entire time?

A. Yes, from the organization of the bank until within a few days of its close.

Q. 4. Were you an active director, Mr. Pogue, during the whole time?

A. Well, yes; I suppose all the directors are supposed to be active; we all took an active interest in the affairs of the bank.

Q. 5. Mr. Pogue, state what knowledge you had of a pretended loan of three hundred thousand ($300,000.00) dollars made by the Chemical National Bank of New York to the Fidelity National Bank of Cincinnati, in February, 1887?

A. I had no knowledge whatever.

Q. 6. When, if at all, did you ever hear that any such loan was claimed to have been made?

A. After the failure of the Fidelity national bank only, and through reports in the newspapers.

Judge Worthington, counsel for plaintiff, not having come in, an adjournment was had to Wednesday morning, May 6th, 1896.

WEDNESDAY MORNING, *May 6th.*

Met pursuant to adjournment, at the office of Henry Pogue, Esq.

244 Present, Judge Worthington, on behalf of plaintiff.

Cross-examination by Judge WORTHINGTON:

Q. 1. Mr. Pogue, who was the active executive officer of the Fidelity national bank?

A. The president was Briggs Swift; the vice-president was E. L. Harper, and Ammi Baldwin was the cashier.

Q. 2. Did any of the officers report at the meetings of the board of directors which you attended, the loans and discounts which had been made by the bank—I do not mean in gross, but I mean in particular—the loans and discounts?

A. No, sir, they did not.

Q. 4. Mr. Pogue, do you know which one of the officers you have mentioned had charge of that department of the business of the bank?

A. I think there was a committee; Mr. Harper was one of the committee who had charge of the loan account; the committee was composed of the active officers of the bank.

Q. 5. What, Mr. Pogue, was it that the board of directors—or the members of the board of directors—did with reference to their activity, in managing the bank?

A. The management—the directors did not manage it; the bank was managed by a board of officers; but the board of directors met and had reports from the officers of the bank at stated times—I think it was every month—at regular monthly meetings.

Q. 6. Those reports, Mr. Pogue, were they spread on the minutes?

A. Whatever reports were made were spread upon the minutes, yes.

Q. 7. And excepting receiving those reports, the directors took no part in the control or management of the bank?

A. Excepting there was some special business.

Q. 8. What I want to know, Mr. Pogue, is whether or not the directors exercised an active supervision of the business of the bank and what the officers are doing, or whether they trusted those officers to perform their duties—their business?

A. Well, I don't really know how to answer that question. They have been called up before a meeting of the board of directors in a matter of loans, or discounts, and have been required or requested to exhibit the loan account to the directors.

245 Q. 9. Is the request to which you refer, Mr. Pogue, the one made by Mr. Kineon.

A. Yes. I don't know of any other case in which they were called up for an investigation for what they did in reference to that matter.

Q. 10. With that one exception, then, the directors left the matter of business, the management of the bank——

A. To the board of officers; yes.

Q. 11. As a matter of fact, Mr. Pogue, Mr. Harper was the active member of that board of officers, was he not?

A. Well, possibly, he was; but Mr. Swift was there every day to my knowledge, excepting when he was out of the city on a short vacation, and his vacations were always short; I never knew him to be away for any great length of time.

Q. 12. I do not mean whether he was present at the bank, but who was the active managing man in the bank?

A. Possibly, Mr. Harper was the managing man.

Q. 13. You have said, Mr. Pogue, that you did not know of this loan that was made by the Chemical national bank to the Fidelity national bank until after the failure?

A. No, sir; I knew nothing whatever about it until after the failure of the Fidelity.

Q. 14. Did you know before the failure as to any instructions which Mr. Harper had given to the receiving tellers to hold out of the clearing-house, and count as cash, checks which had been left with the bank?

A. No; I did not know anything of that matter at all.

Q. 15. Did you know anything about the other so-called cash items which were held cash?

A. No, sir; nothing at all, until after the failure.

Q. 16. Did you find out afterwards that there had been transactions of that kind, Mr. Pogue?

A. Only from reports in the newspapers.

Q. 17. The board of directors had never examined into the cash account, to see how the cash actually in the hands of the bank compared with it as it appeared on the books of the bank?

A. Not without the bank examiner examined those items.

Q. 18. You are the same Mr. Pogue who was a defendant in the suit brought after the failure of the Fidelity national bank, by David Armstrong, receiver of the Fidelity, against Briggs Swift and

others, the directors of that bank, to recover from them for negligence and misfeasance in the performance of their duties?

A. Yes; I was a director.

Q. 19. Has that case been settled, so far as you are concerned?

246 A. Yes, sir.

Q. 20. How was it settled—by dismissal or by compromise, Mr. Pogue?

A. It was compromised.

Tuesday afternoon, May fifth, at the office of Mr. Herron.
Present, Mr. Herron, on behalf of the defendant.

And, also, SOLOMON P. KINEON, who was previously sworn in this case, recalled on behalf of the defendant, testified as follows:

Direct examination by —— ——:

Q. State what connection, if any, you had with the Fidelity national bank during the year- 1886 and 1887?

A. I was a director.

Q. Up to what time in 1887 was you a director?

A. I cannot tell you the date, Mr. Herron; I think it was until about two or three months before the failure.

Q. State what knowledge, if any, you had of a loan having been made, or claimed to have been made, by the Chemical National Bank of New York to the Fidelity National Bank of Cincinnati, of three hundred thousand dollars ($300,000.00), in February, 1887.

A. I never knew anything about it—never heard of it.

Q. State whether you had any knowledge, while you were a director, at any time, of the Chemical national bank having loaned any money to the Fidelity national bank?

A. No, sir; I had not.

Q. When did you first hear of any such loan having been claimed to be made?

A. Well, I guess after Armstrong took hold; after the failure—was the first I heard of it.

Adjourned to Wednesday morning, May 6th, 1896.

CINCINNATI, *February* 25, 1886.

Pursuant to a call the directors met at the banking-house.

Present: Messrs. E. L. Harper, W. H. Chatfield, H. B.
247 Morehead, Franklin Alter, Sol. P. Kineon and A. P. Gahr, Mr. E. L. Harper acting as chairman and Mr. Gahr as temporary chairman.

The resignation of Mr. J. H. Mathews, as a director of this bank, was read, and upon motion accepted. Mr. H. B. Morehead nominated Mr. Henry Pogue as director to fill the vacancy caused by resignation of Mr. Mathews, and upon motion Mr. Henry Pogue was unanimously elected a director, and immediately qualified and took his seat.

Upon motion of Mr. Franklin Alter, seconded by Mr. Kineon,

Mr. Ammi Baldwin was unanimously elected cashier of this bank, and upon motion of Mr. Chatfield, seconded by Mr. Alter, Mr. Benjamin E. Hopkins was elected assistant cashier of this bank unanimously.

Thereupon an adjournment was moved, which motion was duly carried.

A. P. GAHR,
Temporary Secretary.

E. L. HARPER,
Vice-President.

An excellent record.

R. C. P.,
U. S. N. Bk. Ex.

March 12, '86.

"EXHIBIT MINUTES" TO W. B. MCCAULSEN'S TESTIMONY.

CINCINNATI, *May* 6, 1886.

Pursuant to call of the president the directors met this day at the bank.

Present, Messrs. Swift, Harper, Chatfield, Alter, Pogue, Kineon, Morehead and Gahr. Mr. Swift in the chair, and Mr. Gahr acting as temporary secretary.

Upon motion the minutes of the last meeting were read and approved. It was moved and seconded that the chairman appoint a committee of three of the directors to draft and submit a form of by-laws as soon as practicable, which motion was duly carried, and Messrs. Harper, Chatfield and Morehead were appointed to act as such committee.

The question of fixing the salary of Mr. Baldwin as cashier was presented, and Mr. Chatfield moved that the amount of Mr. Baldwin's salary be fixed at $300.00 per month. Motion seconded by Mr. Pogue and carried unanimously.

Mr. Harper moved that as a matter of history, for possible future reference, with the consent of the board a statement of the
248 business of the opening day, and also a statement of the business at the close of this day be incorporated in the minutes, and this motion being duly seconded, and put to vote, was carried unanimously.

In accordance with the resolution above adopted the following statements are included herein:

Opening Day Business, March 1, 1886.

Resources, loans and discounts	$201,915 99
U. S. bonds to secure circulation	50,000 00
U. S. bonds on hand	2,500 00
Other stocks, bonds and mortgages	6,500 00
Due from approved reserve agents	320,785 56
Due from other national banks	153,868 33

Due from State banks and bankers	9,293 86
Real estate, furniture and fixtures	9,500 00
Current expenses and taxes paid	25 50
Premiums paid	15,236 14
Checks and other cash items	45,311 33
Exchanges for clearing-house	431,764 00
Bills of other banks	152,518 00
Fractional paper currency, nickels and pennies	25 50
Specie	16,322 50
Legal tender notes	187,200 00
Total	$1,602,766 71

Liabilities.

Capital stock paid in	$581,000 00
Individual deposits	875,157 27
Certificates of deposit	100 00
Due to other national banks	114,776 33
Due State banks and other banks and bankers	31,733 11
Total	$1,602,766 71

Statement of business at the close—May 6, 1886.

Resources.

Loans and discounts	$1,967,966 40
U. S. bonds to secure circulation	100,000 00
U. S. bonds and stocks on hand	6,900 00
Due from approved reserve agents	114,892 70
Due from other national banks	62,720 17
249 Due from State banks and bankers	37,800 97
Real estate, furniture and fixtures	11,181 30
Current expenses and taxes paid	10,672 27
Premiums paid	26,400 00
Cash	459,194 34
Total	$2,800,258 15

Liabilities.

Capital stock	$1,000,000 00
Undivided profits	29,951 41
Circulation	70,000 00
Individual deposits	1,047,666 09
Certificates of deposit	20,858 48
National banks	528,429 49
Other banks and bankers	103,352 68
Total	$2,800,258 15

There being no further business before the board an adjournment was moved, which was duly seconded and carried.

BRIGGS SWIFT, *Pt.*

A. P. GAHR, *Temp. Sec'y.*

Report of the Committee on By-laws.

On conformity with a resolution passed at the last regular meeting appointing a committee composed of Messrs. Harper, Chatfield and Morehead—

Your committee have hereunto drafted and present the following as their unanimous selection, for your honorable approval.

Respectfully, E. L. HARPER, *Chairman.*

By-laws.

The Fidelity National Bank of Cincinnati, Ohio.

Elections.

The regular annual meeting of the stockholders of the bank
250 for the election of directors shall be held at the banking-house on the second Tuesday in January of each year, between the hours of eleven and one o'clock, and not less than fifteen days' notice of the time and object of the meeting shall be given by advertisement in the daily papers or by notice mailed to each stockholder of record.

It shall be the duty of the board of directors previous to the time of said election, to appoint three stockholders to be judges of said election, who shall hold and conduct the same, and who shall, after the election has been held, notify the cashier or president in writing of the result thereof, and the name- of the directors-elect.

2nd. The cashier or president, upon receiving the returns of the judges of elections as before provided, shall cause the same to be recorded upon the minute book of the bank, and shall notify the directors elected of their election, and of the time and place at which they are required to meet for the purpose of organizing the new board. If, at such time, there should not be a quorum in attendance, the members may adjourn from time to time until a quorum is secured, and no business shall be transacted prior to qualifying, by taking the oath of office as prescribed by law.

3rd. If, for any cause, the annual election for directors should not be held on the date fixed for same in the articles of association, the directors in office shall order an election to be held on some other day, of which special election notice shall be given as provided by law, and judges appointed, returns made and recorded and the directors-elect notified in accordance with sections 1 and 2 of these by-laws.

Officers.

SEC. A. The officers of this bank shall be a president, vice-president, cashier, assistant cashier and such other officers as may in the judgment of the board of directors be from time to time required.

SECTION 5. The president and vice-president shall hold their offices for the current year, for which the board of directors, of

which they shall be members, was elected; unless they shall resign, become disqualified or be removed, and any vacancy occurring in the offices of president or vice-president, or in the board of directors shall be filled by the remaining members of the board.

SEC. 6. The cashier and subordinate officers shall be appointed respectively to hold their offices during the pleasure of the
251 board, and any officer, director or employé may be removed from office at any time by the votes of five members of the board of directors.

SEC. 7. The cashier of this bank shall be responsible for all the moneys, funds and valuables of the bank, and shall account for and deliver the same to the order of the board of directors, or to such person or persons as they may authorize to receive the same.

SEC. 8. The president and vice-president shall be responsible for all such sums of money and property of every kind as may be entrusted to their care, or placed in their hands by the board of directors, or by the cashier, or otherwise, and deliver the same to the board of directors, or to such person as they may authorize to receive the same.

SEC. 9. All transfers and conveyances of real estate shall be made by the bank in accordance with the orders of the board of directors, and shall be signed by the president or vice-president and cashier, and be under the corporate seal of the bank heretofore adopted.

SEC. 10. When any regular meeting of the board falls upon a holiday, the meeting shall be held upon such other day as the board may previously designate.

SEC. 11. The regular meeting of the board shall be held on the second Tuesday of each month, at 3 p. m. Special meetings may be called by the president, vice-president or cashier, or at the request of three or more directors, and should there be no quorum at any regular or special meeting, the members present may adjourn from day to day until a quorum is secured; any meeting may be adjourned by a vote of a majority of a quorum, but in the absence of a quorum no business shall be transacted.

SEC. 12. The organization papers, the returns of all elections, the proceedings of all meetings of the board, the by-laws and all amendments shall all be recorded in the minute book and the minutes of each meeting shall be kept by the cashier, who shall be the secretary of the board, and signed by him and attested by the president or vice-president.

SEC. 13. The cashier shall keep a daily record, giving a list in gross of the discount of each day, which shall be open to the inspection of the board at any time.

SEC. 14. The stock of this bank shall be assignable and transferable only upon its books, subject to the provisions and restrictions of the banking laws; and a transfer book shall be provided in which all assignments and transfers of its stock shall be made.

252 SEC. 15. Transfers of stock shall not be suspended pending the declaration of dividends; and unless an agreement to the contrary shall be expressed in the assignments of stock dividends thereon shall be paid to the party in whose name the stock shall

stand upon the books of the bank, at the date of the declaration of such dividend.

SEC. 16. Certificates of stock shall be signed by the president, or vice-president and cashier and issued to stockholders; and such certificates shall state upon their face that the stock is transferable only upon the books of the bank and when stock is transferable, the stock shall be returned to the bank, and canceled by it and new certificates issued in lieu thereof.

SEC. 17. The president, vice-president and cashier shall have the power to discount and purchase bills, notes and other evidences of debts and to buy and sell bills of exchange.

SEC. 18. All contracts, drafts and checks and all receipts from circulating notes received from the comptroller, shall be signed by the president, vice-president or cashier.

SEC. 19. The directors shall have power to change the form of the books or accounts, whenever deemed expedient by them, and define the manner generally in which the bank's affairs shall be conducted.

SEC. 20. A majority of the board of directors, including the president or vice-president, or either of them, shall be a quorum to transact business.

SEC. 21. These by-laws may be changed or amended in the discretion of the board of directors by a vote of two-thirds of the members thereof.

SEC. 22. No memorandum checks, call loans or other evidences of debt, which should properly belong to the bills-receivable account, shall be considered as cash in the books of the bank; but all such evidences of indebtedness shall appear and be recorded as bills receivable, or call loans in the book or books, provided for such record.

CINCINNATI, *August* 2, 1886.

Special meeting, called by order of the president.

Members present: Messrs. Swift, Harper, Kineon, Morehead and Gahr.

The minutes of the last meeting were read and approved.

253 The report of the committee on by-laws *were* read and approved. The report of the committee on by-laws was then offered—the same being engrossed upon this minute book, and read, and before action was taken thereon, Mr. Morehead offered the following to be included as section No. 22, viz:

Special meeting—Continued.

AUG. 2, 1886.

"No memorandum checks, call loans or other evidences of debt which should properly belong to the bills-receivable account, shall be carried as cash in the books of the bank, but all such evidences of indebtedness shall appear and be recorded as bills receivable or call loans on the book or books provided for such record."

Upon motion by Mr. Morehead, seconded by Mr. Kineon, it was

resolved, that the report be received and that the by-laws as amended be adopted. Carried.

On motion, adjourned.

AMMI BALDWIN,
Cashier & Secretary.

CINCINNATI, *August* 10, 1886.

Regular meeting of which all members were duly notified.

The members present were Messrs. Harper, Kineon and Gahr.

There not being a quorum present it was decided by resolution to adjourn.

AMMI BALDWIN,
Cashier & Secretary.

CINCINNATI, *Sept.* 14, 1886.

Regular meeting.

The members in attendance were Messrs. Swift, Harper and Alter.

There not being a quorum present the meeting was adjourned without further action.

AMMI BALDWIN,
Cashier & Secretary.

CINCINNATI, *Oct.* 12, 1886.

Regular meeting.

Only members in attendance were E. L. Harper and A. P. Gah-, being not a quorum present of members the meeting adjourned.

AMMI BALDWIN,
Cashier & Secretary.

254 CINCINNATI, *Nov.* 9, 1886.

Regular meeting.

Members present were Briggs Swift, E. L. Harper, A. P. Gahr, S. P. Kineon and there being no quorum present, the meeting adjourned.

AMMI BALDWIN,
Cashier & Secretary.

CINCINNATI, *Dec.* 14, 1886.

Regular meeting.

The only members appearing being W. H. Chatfield, A. P. Gahr, E. L. Harper and no quorum present the meeting adjourned.

AMMI BALDWIN,
Cashier & Secretary.

CINCINNATI, *December* 24, 1886.

Called meeting.

Members present: Messrs. Swift, Harper, Kineon, Chatfield, Gahr and Alter.

The minutes of meetings, Aug. 2d, Aug. 10th, Sept. 14th, Oct. 12th, Nov. 9th, Dec. 14th, were read and approved. The president offered the following report of the condition of the bank to the present date, viz:

Statement of Resources and Liabilities of the Fidelity National Bank, Ending December 23, 1886.

Resources:

Call loans	$435,399 50
Domestic bills	1,436,669 93
Foreign bills	852,005 60
U. S. bonds to secure circulation	100,000 00
Premium on U. S. bonds to secure circ'lat'n	26,400 00
5 per cent. redemption fund	4,320 86
U. S. bonds on hand	1,550 00
Stocks and bonds on hand	12,200 00
Exchange	288 82
Furniture and fixtures	11,746 90
Stationary, stamps, etc	5,567 74
Expenses	39,163 18
Profit and loss	203 75
Protest fee account	15 90
Funds in transit	89,280 38
Reserve in N. York Chemical nat. bank	227,692 98
Reserve in N. York Nat. Broadway bank	78,958 26
Cash in hand	641,206 53
	$3,962,670 33

255 Liabilities:

Capital stock	$1,000,000 00
Individual deposits	1,144,490 46
Certificates of deposit	18,347 34
Due national banks	1,108,008 04
Due banks and bankers	493,981 22
Cashiers' checks outstanding	486 10
Circulation	90,000 00
Interest accrued	107,357 17
	$3,962,670 33

Profits to Date.

Interest accrued and interest estimated, C., L. & C.		$117,357 17
Expenses	$39,163 18	
Profit and loss	203 75 less	39,366 93
Net profits		$77,990 24

Called meeting, Dec. 24, 1886—Continued.

On motion of Mr. Harper, seconded by Mr. Chatfield, it was resolved that the sum of $50,000, fifty thousand dollars, be taken from the accrued profits and placed to the credit of the surplus fund account. On motion of Mr. Kineon, seconded by Mr. Alter, it was resolved that a quarterly dividend from the net earnings of 1¾ per cent., one

and three-quarters per cent., be declared upon the capital stock of the bank to the shareholders of record, Dec. 30th, 1886, the same to be placed to the credit of each in account subject to check on and after January 3rd, 1887.

On motion, adjourned.

AMMI BALDWIN,
Cashier and Secretary.

CINCINNATI, *January* 11, 1887.

Regular meeting.

Members present: Messrs. Swift, Harper, Kineon, Chatfield, Pogue and Gahr.

The minutes of the last meeting were read and approved. The report of the stockholders' meeting and return of the judges
256 of election were then received, read and ordered placed upon the minutes, and are as follows, viz:

"At the regular annual meeting of the stockholders of the Fidelity National Bank of Cincinnati, Ohio, held at its banking-house, January 11th, 1887, without any formal motion or proposition it was agreed to proceed with the election of directors for the ensuing year, in accordance with the provision of the by-laws.

"Messrs. J. W. Wils-ire, Joseph Lohman and J. O. Whittaker, being selected as judges of the election, proceeded with the duties as required, and present the following report, viz:

"*Report.*

"CINCINNATI, *Jan'y 11th*, 1897.

"We, the judges of the election held this day for the election of directors of the Fidelity National Bank of Cincinnati, Ohio, for the ensuing year, thereby declare that there has been 6,932 shares of stock voted with the following result, viz:

"Briggs Swift, received 6,932 votes.
"E. L. Harper, received 6,932 votes.
"W. H. Chatfield, received 6,932 votes.
"Henry Pogue, received 6,932 votes.
"A. P. Gahr, received 6,932 votes.
"Sol. P. Kineon, received 6,932 votes.
"J. H. Mathews, received 6,932 votes.
"Ammi Baldwin, received 6,932 votes.
"Benj. E. Hopkins, received 6,932 votes.

"(Signed) J. W. WILSHIRE,
"JOSEPH LOHMAN,
"J. O. WHITTAKER,
"*Judges of Election.*"

It was then, upon motion, resolved to adjourn "*sine die.*"

AMMI BALDWIN,
Cashier and Secretary.

Regular meeting.

CINCINNATI *Jan'y* 11, 1887.

Regular meeting.

The newly elected board of directors, composed of the following gentlemen, namely:

Briggs Swift, E. L. Harper, W. H. Chatfield, Henry Pogue,
257 Sol. P. Kineon, A. P. Gahr, J. H. Mathews, Ammi Baldwin and Benj. E. Hopkins, being present and duly qualified, by taking the oath of office, administered by Mr. Edward Gurney, the notary public of the bank, met in session, Mr. Baldwin acting as chairman, when Mr. Briggs Swift was nominated for president, there being no other nominations, the election followed and Mr. Swift was declared unanimously elected president. Taking the chair, Mr. Swift stated that nominations were in order for vice-president.

Mr. E. L. Harper, receiving the only nomination, was then voted for and was unanimously elected vice-president.

Mr. Ammi Baldwin, being nominated for cashier, and Mr. Benj. E. Hopkins for assistant cashier, both were duly elected to fill these positions.

There being no further business, on motion, the meeting then adjourned.

AMMI BALDWIN,
Cashier and Secretary.

CINCINNATI, *Feb'y* 8, 1887.

Regular monthly meeting.

Members present: Messrs. Harper, Chatfield, Kineon, Mathews, Hopkins, Baldwin, Mr. Swift being absent, Mr. Harper took the chair.

The minutes of the last meeting were then read and approved. The chair then reported that the Treasurer of the United States, having designated this bank as a United States depository, proposing to leave a deposit of $300,000 to credit of the treasurer, it was necessary to purchase Government bonds to secure the same, and that the officers acting upon this requirement had purchased $340,000 United States 4 per cent. 1907 bonds, and had deposited them with the Treasurer of the United States, to be held in trust as security for the safe keeping and prompt payment of the public moneys deposited with the bank, and that the bonds had been purchased at the lowest available market rates.

Mr. Chatfield then offered the following resolution, which was seconded by Mr. Kineon, viz:

"Be it resolved That the board approves the action of the officers in the purchase and deposit of the $340,000 Government bonds as security for public moneys." Carried. On motion, adjourned.

AMMI BALDWIN,
Cashier and Secretary.

258 CINCINNATI, *March* 8, 1887.

Regular monthly meeting.

Members present: Messrs. Harper, Pogue, Kineon, Chatfield, Hopkins, Mathews and Baldwin.

The minutes of the last meeting were read and approved. On motion, Mr. Kineon, seconded by Mr. Pogue, it was resolved that a quarterly dividend of 1¾ per cent., one and three-quarters per cent., be declared from the net earnings, upon the capital stock, and placed to the credit in account each shareholder of record on March 31, 1887, subject to check on and after April 1st, 1887.

Unanimously carried. On motion, adjourned.

AMMI BALDWIN,
Cashier and Secretary.

CINCINNATI, *March* 26, 1887.

Called meeting.

Members present were Messrs. Swift, Harper, Chatfield, Pogue, Gahr, Mathews, Hopkins, Baldwin.

The only absent member was Mr. Kineon, although all members were duly notified of the meeting and object. The president stated that the object of the meeting was to take into consideration the increase of the capital stock; that the matter had been discussed among the members, and that they believed the proper time had arrived to make an increase, which could be done in accordance with the articles of association.

Thereupon, Mr. Chatfield offered the following motion, which was seconded by Mr. Harper:

Be it resolved, That the capital stock of the bank be increased $1,000,000, one million dollars, and that the same may be furnished to the shareholders of record of April 5, 1887, in like proportion to the amount of their holdings at the rate of $135, one hundred and thirty-five dollars, per share. Unanimously carried.

Mr. Pogue, seconded by Mr. Hopkins, then offered the following resolution:

Resolved, That a call be made in accordance with the foregoing resolution of 50 per cent. installments, the first to be paid in by 5th of April, 1887, and the second by 5th May, 1887, and that the shareholders shall be so notified from now until April 5th, by advertisements in the daily papers. Carried.

There being no further business, the meeting then, upon motion, adjourned.

AMMI BALDWIN,
Cashier and Secretary.

259 CINCINNATI, *May* 10, 1887.

Regular monthly meeting.

Members present: Messrs. Swift, Harper, Chatfield, Kineon, Mathews, Hopkins and Baldwin.

The minutes of the last two meetings were read and approved.

The president asked that the names of those having discounts for

the past month be read, which was done by the cashier. Mr. Kineon then offered a resolution that a committee of three be appointed by the chair to examine the bills receivable of the bank, which being seconded by Mr. Chatfield, the question was put and was declared carried.

The chair named Messrs. Chatfield, Pogue and Gahr as that committee. Mr. Kineon here gave his resignation as he had sold his stock and to fill the vacancy Mr. Eugene Zimmerman was nominated and was unanimously elected. No further business offering the meeting then adjourned.

AMMI BALDWIN,
Cashier & Secretary.

Report on this account ten days after receipt.

CINCINNATI, —— —, 188–.

In account with the Fidelity National Bank of Cincinnati.

Monthly Statement.

DR.		No. —.		CR.		
	We charge:				We cr.:	
3-1	46881	3 62	3-1	Cortland		35 94
	342		3-3	Fees 1.11 each		2 22
3-4	Error 342 14	86	3-21	Ret'd		67 65
	—		"	"		79 98
	462 50		3-24	Mihalovitch		31 85
3-7	Error 462	50	"	"		135 65
3-7	Letter	106,025 04	3-28	Ret'd fees		59 35
3-15	Error 3-7	100				
3-17	Letter	115,406 38		You cr.:		
3-26	Letter	78,836 95	12-12	Letter		28,500 82
3-29	Letter	68,301 29	12-17	Miles		500
3-30	Letter	58,717 71	1-11	Oneida		102 25
3-31	Coll. 112,861	31	3-2	New Atlanta		8,500
	" 51822	22 50	3-7	1st Ashville		10,000
	Canceled 12100	1,000	3-9	Letter		100,235 92
	Letter	98,704 01	3-15	Brown		2,203 40
12-10	Letter	28,599 79	"	Lamb		3,785 72
9-16	Due 7-19 T. Bq. 45	44 68	3-19	Letter 3-17		99,853 73
2-5	1st Ashville	10,000	3-25	B. W. Hitchcock		200 75
2-25	Ret'd	1 65	3-26	Van Worden		173 91
2-21		3 08	3-28	Letter 3-26		26,046 92
2-21		60,000	"	Carter		124 91
2-26	New Atlanta	10,000	3-29	N. Y. Life Ins. Co		9 43
				Wenham		14 75
	You charge:		3-30	Furlong		63 20
2-25	Ret'd	25 94		Jessetson & Co		100
3-11	Cash ret'd unpaid	1,500	3-31	Greensboro		841 31
"	" " "	2,500		Letter		66,023 19
3-16	Ret'd	89 85		Drafts outstanding		99,217 82
3-19	"	147 63		Their balance		32,675 97
3-22	"	167 50		Our balance		50,376 48
3-31	Cash	60 09		Out in Feb. account		50 50
		15		Error in checks		01

Reconcilement sheet for Chemical national bank. March, 1887.

EFFIE V. RYAN,
Special Examiner.

200

3280	100	1136	50
4073	5	97	000 00
4551	43	426	303 50
4961	200	134	000
6321	100	41	100
6959	1,000	55	00
6960	1,000	99	0,000 00
1	500	515	75
7779	100	66	324 80
8024	100	73	98 15
275	30	5	8
389	0	80	1,500
630	100	2	25
1	100	3	5
89	100	612	00

		91		100	8		25
		4		100	40		10
		5		100	704		00
		6		100	26		50
		8		100	41		50
		8752		50	2		166 66
		9149		1,000 64	53		75
		50		500	77		87 90
		5		70	821		200
		572		22 90	37		1,000
		645		100	8		25
		6		100	66		75
		8		100	77		800
		50		100	9		2 50
		1		100	88		93 40
		2		100	923		0 00
		9783		100	8		00 00
		4		100	9		100
		5		100	30		100
		7		100	66		8 10
		10107		00	75		50
		8		00	6		300
		14		50	9		137 43
		45		100	81		125
		6		100	2		25
		343		150	4		28
		411		4 44	12011		303 20
		89		25	2		10
		10519		100	6		38 96
		20		100	7		50
		630		0,000	21		1 31
		11017		000	2		25 00
		8		150	5		20 05
		9		00	32		4 70
		40		3	4		30 31
		80		200	5		140 63
		94		00 00	45		35
		8		0,000 00	8		5 70
		224		0,000 00	9		16 50
		356		50	50		18 81
		7		50	2		15
		8		50	3		10
		9		50	4		67
		60		50	6		246 87
11697—	7,000	120 57		609 05			
12079—	1,000	61		61 99			
12089—	115 93	3		74			
12091—	2,734 13	4		200			
	35,458 06			26,796 67			
3-3	62,254 73			36,559 65			
3-31	131,559 65						
	75,000						

261 Report on this account ten days after receipt.

CINCINNATI, —— —, 188–.

In account with the Fidelity National Bank of Cincinnati.

DR. *Monthly Statement.* CR.

	You charge:				You credit:		
4-8	Ass't tr. for c'y delivered to Cin'ti x	50,037 50		12-12	Letter	28,500 82	
	Ass't tr. for c'y delivered to Cin'ti x	50,037 50		1-11	Oneida	102 25	
4-10	Ret'd	10		3-19	Letter 3-17	90,853 73	
	"	3		4-6		168 99	
16	Ret'd pro. x	2 40			Carpenter	41 70	
25	Cash ret'd x	1 11		7	Letter	126,687 94	
27	Ret'd	4		9	Parker	300	
	" end	133 60			1st Ashvile	5,208 07	
		90 80		11	Weeks	13 65	
28	Exch'g's in 18 from Hayden, Columbus	14 40		25	Case	31	
30	Exch'g's in 20 from Hayden, Columbus x	16		28	Sargent & Co	200	
				30	Brown & Co	131 62	
					J. R. H. Thompson	471 30	
				28		555 86	
	We charge:				We credit:		
4-16	1st Ashville	10,000		4-1	Ret'd 4th Grand Rapids	909 26	
4-5	Letter	126,707 94		9	C'y	100,000	
9	Coll. 54142	167 58		14	Ch's listed 3-17 suit to Nat. Broadway	15,541 05	
11	F. B. 3669	294 42		29	Sent in error letter 4-27	241 50	
15	50180	261 44		5-3	Fees 1.11 each	2 22	

THE CHEMICAL NATIONAL BANK OF NEW YORK.

25	52405	1 85
29	Letter	69,964 85
30		80,872 09
3-1	46881	3 62
3-2	Error	86
3-7	"	59
13-17	Letter	115,406 38
2-10	"	28,599 79
2-21	Ret'd	1 65
		3 08
	Overdraft paid by claim and not cr. No. 12310	50,000

Our draft note cr. 12310	
Out in Feb. account	50 50
Your balance	111,761 29
Our balance	42,360 10
Drafts outstanding	49,441 95

Reconcilement sheet for April.

E. V. R.,
Special Examiner.

3280	100
4073	5
551	43
961	200
6321	000
950	0,000
1	000
7779	000
8024	000
694	000
8	000
752	50
9149	1,000 64
50	500
5	70
572	22 90
645	000
6	000
8	100
50	100
1	100
2	100
11356	50
7	50
441	100
575	0
12064	000
101	0,000
211	150
2	150
3	200
46	25
350	0,000 00
5	00 00
6	0,000 00
76	00 00
415	500

13147	75
9	00 00
62	25
7	100
88	17
205	0,000
6	000 00
40	450
56	60
8	100
94	1,884 20
300	1,000
16	000 00
20	9 17
91	00
417	35 40
38	14 95
66	10
75	00,000 00
81	600
2	700
6	12 19
528	25
42	150
78	000
90	231 10
6	200
616	61 25
21	18
4	350
36	1 75
44	70
52	93
63	000 00
85	50 99
87	99 80
96	24 55

262

508	0,000
20	000 00
37	000
608	00
11	1 60
3	00,000
752	000
90	0,000 00
846	93
8	172 58
50	500
1	500
2	500
3	300
85	25
94	0,000 00
931	0,000 00
13039	100
97	00
306	55
139	0,000
45	327 66
13777	58 34
9	5
80	9 58
1	175 90
2	100
3	503 80
4	124 94
90	24 80
3	2
4	4 15

7	7 92
8	34 21
700	2,400
10	114 79
1	500
3	0 00
5	150
6	10
7	00,000
9	11 90
25	200
7	6 66
9	1,000
31	0,000
44	150
60	50
1	79 50
5	87
7	21 28
8	22 26
70	10 68
1	4 80
2	431 10

6		57 91
7		218 24
8		6
801		122 57
2		59 39
3		3,105 39
5		2 30
6		249 80
7		249 80
8		1 80
9		55 91
11		19 53
12		15 59
13		108 15
15		318 13
16		52 30
		25,838 83
	13830	100 00
	1	50 00
	2	400 00
	3	5
	41	1,394 13
	8	40
	51	10
	8	2
	61	20
	4	40
4-30	163,232 96	
	137,394 13	
	25,838 83	

263 U. S. depository.

The Fidelity national bank.

Capital, $1,000,000.

Briggs Swift, president; E. L. Harper, vice-president; Ammi Baldwin, cashier; Benj. E. Hopkins, ass't cashier.

CINCINNATI, 5, 12, 1887.

W. J. Quinlan, cas., N. Y.

DEAR SIR: Your statement for April received, examined and find the following differences: On Dec. 12th, you or our letter of 10th as 28,500.82—we have this 28,599.79. Will you kindly return our letter as we are unable to trace the difference. We charge 4-9-167.58 in ours 4-4th. 4-11 in our 3-30 due 4-11-294 42, 4-15 in ours 3-10-261.44. Please examine and see if we are not correct as you advised them paid. We credit returned 969.26—you returned this item to 4th nat. bank (9th) Grand Rapids about the 12th of Feb. You credit 1-11 Oneida (Oneida Co.) says bk. rec. Jan'y 3, '87—102.25. We are unable to find this, does this belong to us, if so (star). Please report by number or date of letter.

You cr. 4- 6, 168 99	*25-18	Your chg. 4-90 fees, 167 58	
" 4- 6, 41 70		1 41	
" 4- 9, 300	*C. R. Carpenter, Pawtucket, R. I., rec'd about March 30th.		
" 4-11, 13 65	*Note Wm. Baker rec'd about Feb. 5, '87.		
" 4-25, 31	*Weeks, F. & Co., Woonsocket, R. I., rec'd about March 20th.		
" 4-28, 200	*Cases F., Woonsocket, rec'd about April 14th, acc't Sargent & Co., rec'd April, it credit 4-11, $261 44		
		294 42	
			$555 86

You cr. 4-28, 555 86	No. cr.	Cr. 4-11	
" 4-30, 131 62	4-28, Cr. 4-11	$261 44	
" 4-30, 471 30	81 29	294 42	
	67 66		

Please return this letter with your reply and oblige,

FIDELITY NATIONAL BANK,
Per WATTERS.

Note Brown & Bro., rec'd about April 11-18, J. R. H. Thompson, rec'd Feb'y 3, '87.
*Please report by number or date of letter.

N. Y., *May* 19, '87.

We have investigated the above and gave you the dates as near as we can without spending a great deal of time, and in some cases would have to write for the notes; presume you will be able to trace most of the items from the above information, if any should be too difficult, let us know and we will try and give you more information and where possible your letter dates.

W. J. QUINLAN, Jr.
F.

Letter as to reconcilement of April account.

E. V. R.,
Special Examiner.

264 Report on this account ten days after receipt.

CINCINNATI, —— —, 188..

In account with the Fidelity National Bank of Cincinnati.

Monthly Statement, May Reconcilement.

No. —.

DR.			CR.		
	You charge:			You credit:	
4-27	Ret'd	4	12-12	Letter	28,500 82
"	" end	133 60	3-19	" 3-17	99,853 73
"	" "	90 80	4-7	"	126,687 94
5-2	Fees	1 11	25	Case	31
3	Ret'd	12 50	5-3	Simon	257 62
11	Ex. on 17 P. Hayden & Co.	13 60		Loch	78 71
27	Ret'd	13 92	18	S. P. M. Pub. Co.	210
"	"	10 33	24	Sayer	0 00
"	"	25	27	Nash	10 80
28	"	50 60		Wright	5 25
			28	A. Reid	518 68
				2nd Parkersburg	7,000
			31	No. 58609	60 50
	We charge:			We credit:	
12-10	Letter	28,599 79	4-14	C'ks listed 3-17 suit to Nat. Broadway	15,541 05
2-21	Ret'd	1 65	29	Sent in error letter 4-27	241 50
"		0 00		Out in Feb. account	50 50
3-1	96881	0 00	5-17	Error	1 37
3-2	Error	86		Drafts outstanding	201,455 53
3-7	"	59			
3-17	Letter	115,406 38		Our balance	32,937 61
4-5	Letter	126,707 94			
9	Fees	1 41			
25	52405	1 85			
	Our d'ft by Chem. and notes No. 12310	50,000			
5-11	Coll. 57632	1 50			
23	Ret'd 5-18 cr. 6-10 and chg. acc't coll.	99 13			
27	Error	0 30			
31	Letter	161,819 08			
	Your balance	30,446 68			
	Error	09			

Reconcilement sheet for May.

E. V. R.,
Special Examiner.

3280	100	15326	1 65
4073	5	30	17 40
551	43	6	8
8752	50	7	6 45
9149	1,000 64	8	12 50
572	22 90	9	25
652	100	45	201 46
12211	150	7	50
850	500	8	342 23
1	500	9	44 55
2	500	65	69 94
3	300	66	69 75
13030	100	7	68 83
145	327 66	8	64 50
67	100	9	61 89
320	9 17	70	54 77
481	600	4	34 20
2	700	5	32 52

542		150	6		30 48
711		500	8		12
991		25	83		35
405		2 07	4		25
14263		25	5		64 95
317		300	7		23 34
15099		50	9		76 06
14507		87 50	90		1 40
677		25	7		2,000
710		25	9		50
804		28 35	401		650
18		100	5		43 12
24		1,000	11		36 90
31		50	21		100
38		50 15	2		100
43		110	3		100
4		38	4		50
76		112	425		1,000
966		300	6		50
7		8	30		25 11
265					
84		150	33		83 87
15135		10	5		306
79		16 12	5-31		184,490 90
89		100			
99		20 93			
231		36 57			
39		50			
59		35			
60		100			

Report on this account ten days after receipt.

CINCINNATI, —— —, 188-.

Chemical New York May reconcilement in account with the Fidelity National Bank of Cincinnati.

Monthly Statement.

No. —.

DR.			CR.		
x We charge			You credit		
4-5	Let. you cr., 4-7	126,707 94	4-25	Case *1	31
5-31	Letter	126,687 94	5-3	*2	257 62
		20		*3	78 71
		161,819 08	18	*4	210
			27	*5	10 80
				*6	5 25
			28	*7	518 68
			31	*8	60 50

Will you kindly see what this difference of 20.00 in our letters of 4-5th.

Please return this sheet with your reply and oblige, Fidelity, Heck.

x See back of sheet, dr'ft of 20.00 in footing your letter of which we notified you April 7th.

5. xxCredited June 7, '87.

(Letter as) to differences in May reconcilement.

E. V. R.,
Special Examiner.

On back of sheet:

82 30
17 72
100
8 63
38 35
1 50
5 74
10 80
26 54
87 85
10 13
1,368
16 25
3
50
50
232 16
6 15
43 95
136 70
24
1
24 94
59 83
30
52 50
75
10 13
10

2,583 17

* Please report by number or date of letter.

1 Case and F., Norwich, Ct., rec'd April 14th.
2 Will investigate and report.
3 Item on Berry, Ky. Rec'd about July 27th, think the bank at Berry remitted to you, as there was considerable delay in securing the money.
4-5 Peoble Co., Colo. rec'd about this date.
5 D'ft Nash & P., rec'd about May 27th.
6 " Wright & Co., rec'd about May 27th.
7 Note rec'd May 12, '87.
8 F. 12-10, rec'd May 31.

266 **Report on this account ten days after receipt.**

CINCINNATI, —— —, 188–.

Chemical New York reconcilement in account with the Fidelity National Bank of Cincinnati.

Monthly Statement.

DR. No. —. CR.

They charge and we do not cr.:

4-27	Ret'd x		4
"	" end x		133 60
"	" " x		90 80
6-2	Fees x		1 11
6	Interest on our draft x		42 41
7	Ret'd		345 71
15	Prem. pd. ass't tr. on 80,000.00 x.		60 00
17	Ret'd		490
	Prem. pd. ass't tr. on 100,000.00 x		75
	C. A. Cross		492 50
13	Fees x		1 88
20	Ret'd		50
	Fees		1 54
	Our Chem. cl'k No. 15529 not credited		4,133 33

We charge and they do not cr.:

3-17	Letter		115,406 38
4-5	"		126,707 94
6-4	63619 x		178 50
7	R. ac. 6-2 ret'd x		37 60
8	Ret'd 6-2 x		23 05
6-17	Order tran. F. from 1st N. Y.		50,000
14	Letters		126,200 78
15	Richmond, Va		4,300
17	Letter		50,466 87
18	62726 x		2 65
20	Mer. Atlanta		8,000
	66320		12
	Exchg. on our letter 6-13		11
	" " " " 6-15		10
	Our balance		349,799 57

They credit and we do not charge:

3-19	Our letter 3-17 11 60 ex. x		99,853 73
4-7	" " 4-5 20 00		126,687 94
4-25	Case		31
5-3	Simon		257 62
	Losh		78 71
6-3	Bunker		171 90
16	Our letter 6-14		20,000
	" " "		96,200 78
			4,000
18	Loan		200,000
20	Our letter 6-17		40,456 87
	A. F. Reid		345 25
	Mercantile		250
	"		250

We credit and they do not charge:

4-14	C'ks listed 3-17 sent to Nat'l Broadway		15,541 05
29	Sent in error letter 4-27		241 50
	Out in Feb. account		50 50
6-17	Ret'd		300
20	" 6-14 and fees		1,302 02
	" 6-17 "		5,002 02
	" "		494 04
	Exchange x		1 03
	Drafts outstanding		136,530 96
	Their balance		89,030 10

Reconcilement sheet for June.

E. V. R.,
Special Examiner.

1-6, '86	W. T. Stemler	4073	5
1-11, '87	W. H. Stanage	8757	50
1-21, '87	Rob't J. Smith	9149	1,000 64
2-1, '87	Witman Stove Co	9572	22 90
2-3, '87	Augusta Harbeson	8024	100
4-11	Joseph Orr	12850	500
"	" "	12851	500
"	" "	12852	500
"	" "	12853	300
4-18	Lizzie Stuart	13145	327 66
4-20	A. C. Tyler	13320	9 17
4-23	Mary S. Thoms	13542	150
5-2	Jas. S. Zerbe	13991	25
5-7	Henry M. Cist	14317	300
5-12	C. M. Thompson	14507	87 50
5-19	Louisa S. Hoel	14824	1,000
"	Mer. national, Des Moines, Iowa	14838	50 15
5-21	Ervin Maxwell	14984	150
5-28	F. E. Mackentepe	15421	100
6-1	F. H. Sibley	15567	25
6-2	Alliance Bkg. Co	15682	1 65
"	Robert Lundy	15710	3
6-3	H. A. Axline, adj. gen'l	15753	6
"	Geo. Koch	15757	10 44
6-4	Cinti. Oyster & F. Co	15858	6
6-7	Smith & McLarevin	15970	53 10
6-7	C. A. Blakely	15992	100
6-7	W. W. Whitaker	16020	25
6-8	John H. Bynum	16055	12
"	C. W. H. Luebbert	16059	700
6-10	G. A. Roberg	16134	59
"	C. M. Thompson	16143	233 33
"	Bank of St. Lawrence	16158	16 90
6-16	J. M. Mans & Co	16475	11
"	Goodyear R. Co	479	19 20
"	N. Y. Rub. Co	481	5 10
"	Mattson Rub. Co	485	14
"	Davidson " "	486	27 98
"	Tyler " "	490	4 32
"	F. Pustet & Co	494	110 84
"	" "	496	9 08
"	" "	497	20 51
"	S. D. Powell	501	35
"	H. & S. Pogue	503	29 38
"	" "	504	57 85
"	" "	507	141 74
"	" "	508	24 90
"	" "	516	41 36
"	" "	520	19 74
"	Lewis H. Utz	526	42 26
"	" "	527	32 90
"	Kingery Mfg. Co	528	50
"	A. Bosworth, cas	530	124 80
"	Hamilton & Baker	531	16 15
"	Jas. D. Kelly, cas	532	39 80
"	Milford nat'l, O	534	1 25
"	Pulle & Elliott	537	75 90
"	" "	538	43 24
"	Geo. A. S. Wilson	540	46 20
"	Armour & Co	541	200 21
"	Dan. Head & Co	543	683 70
"	F. & H. Foust & Co	544	49 80
"	E. Bennett & Sons	546	84 40
6-17	E. B. Gosline	548	27
"	Fr. of Johnson Co	549	24 60
"	" Wilson Co	550	22
"	" Butler Co	551	15
"	A. H. Seinsheimer & Co	552	894 23
"	Masonic Mut. Life Ass'n	553	85 60

267

6-11	State bk., Lima	16175	175 84
"	M. M. Eaton	16242	150
"	M. D. Call & Co.	16267	85 08
"	Bexar Co. sav. bk.	16275	24 80
6-13	A. W. Simcock	16295	2 30
"	Kingery Mfg. Co.	16337	50
6-13	Lima H. Fish	16338	3 28
"	P. B. Fraser, cas.	16353	9 80
"	E. L. Welch, cas.	16356	384 80
"	J. B. Watkins Bkg. Co.	16360	599 80
6-14	F. Pustet & Co.	16365	57
"	Hall & Stebbins	16372	12
"	Byron Weston	16373	584 34
"	S. J. Stevens	16379	150
"	W. D. Freeman	16386	30 78
"	" "	16387	24 30
6-15	Am. Ex. Chicago	16412	100,000
"	Pratt & Cady Co.	16418	148 83
"	W. S. Evans	16422	150
"	H. & S. Pogue	16425	64 87
"	" "	16427	37
6-15	M. A. McGuire	16452	85 92
"	Horswell & French	16454	110 47
"	Herkimer bk., N. Y.	554	39 22
"	S. H. Tingley, cas.	555	205 10
"	M. P. Pegram, "	556	35 80
"	J. A. Irvin, "	557	4,995 03
"	Knauth, Nachoo & K.	560	24 75
6-17	S. J. Broadwell	561	5
"	W. L. Douglas	559	141 30
"	Knauth, Nachor & K.	564	44 10
"	John Brofield	565	12 50
"	Excelsior Seat Co.	567	74 80
"	Comstock & Couse	568	19 66
"	W. D. Freeman	569	7 27
"	" "	570	60 92
"	H. P. Lloyd	572	30
"	H. Z. & H. Oppenheimer	573	106 08
"	Adolph Meyer & Co.	574	1,000
"	B. H. Kroeger	575	34 31
"	Perry & Co.	577	1 88
"	S. K. Martin, L. & Co.	576	157 89
6-18	G. A. Roberg	578	88 30
"	" "	579	112 80
"	" "	580	104 79
"	" "	581	278 76
"	" "	16582	36 29
"	" "	583	12 58
"	Edgar M. Moore	584	198
"	Pulle & Elliott	586	24 41
"	" "	587	35
"	Mrs. H. J. Snider	588	100
"	Henry Bainbridge & Co.	589	40 85
"	F. Pustet & Co.	590	1,500
"	F. Helffuench & Son	591	261 53
"	" " "	592	20 40
"	Mrs. J. H. Elbert	593	15
"	J. H. Weston	596	1,500
"	J. F. Lamg & Co.	597	117 63
"	Mrs. M. R. Lovett	598	100
"	Buddeke Bros. & Co.	600	172 25
"	" " " "	601	56 50
"	" " " "	602	36 90
"	" " " "	603	15 61
"	" " " "	604	78
6-20	Williams & Rogers	605	16 20

Please report within ten days.

——, —— —, 188–.

Chemical National Bank, New York, to Fidelity National Bank of Cincinnati, Ohio.

Your statement of account for the month of ——, 188–, is received, examined and found correct, with the following exceptions:

You charge and we do not cr.:

6-20	Ret'd.		50
	15529		4,133 33
5-12			00 00

You credit and we do not charge:

5-3	4th Columbus	257 62
5-3		78 71
6-3	Bunker	171 90
6-28	127227	
22	10000	
25	7126011	984 87
30		401 89
7-6		2 85
6-8	Loan	2,000 00

We charge and you do not cr.:

		38,447 74
		3 08
	Our balance	399,980 07
		442,611 14

We cr. and you do not charge:

	Drafts outstanding	136,530 96
6-6	L. 6-14	8 51
6-20	Fees 6-20	1 88
	Error 6-20	1 20
	Your balance	92,888 60
		442,611 14

In reconciling, report our collection by number.

Respectfully,

Signature. —— ——. 1 20

Attempt at reconcilement of June account.

E. V. R.,
Special Examiner.

268 David Armstrong, receiver of the Fidelity national bank.

Capital, $1,000,000.

CINCINNATI, *July* 12, '87.

Chem. N. Y.

DEAR SIR: Your account current received and examined and find the following differences.

You charge:

71
6-7 Ret'd 345 Please give date of our letter containing this.

00
17 Ret'd 490 Please give date of our letter containing this.

00
20 Ret'd 050 Please give date of our letter containing this.

You credit:

62
5-3 Simon 257 (S) Please report by number or date of letter.

71
5-3 Losh 78

90
6-3 Bunker 171

25
20 A. F. Reid 345

20000 78 00
16 L 6-14 9620078 we have it 126200 difference 10000

87 87 00
20 L 6-17 40456 we have it 50466 difference 10010

Please examine and explain.

Armstrong letter to Chemical July 12, 1887, E. V. R., special examiner.

Chemical national bank.

NEW YORK, *July* 6, 1887.

Edward Armstrong, Esq., receiver.

DEAR SIR: Several days ago when I wrote you I did not state that the Fidelity nat. bk. had 2 loans from us—$300,000, dated M'rch 2, '87; $200,000, dated June 17, '87—as I understood P't Williams had so stated in his letter.

Resp'y, WM. J. QUINLAN, JR.

Letter from Quinlan to Armstrong, July 6, 1887, E. V. R., special examiner.

269 Chemical national bank.

NEW YORK, *May* 11, 1887.

Ammi Baldwin.

DEAR SIR: You report drft. $200 in crediting your letter March 04 85 85 7th, $106,025 you listed item $10 should be 110 letter-sheet No. 21 61000

We overcredited 3–15 3,785.72; should be 3,685.72. Correct April 19, $100.

Very resp'y, W. J. QUINLAN, JR.

Letter from W. J. Quinlan to Ammi Baldwin, May 11, 1887. E. V. R., special examiner.

Chemical national bank.

NEW YORK, *May* 18, 1887.

Ammi Baldwin.

DEAR SIR: Herewith find your letter of Dec. 10th for inspection and return.

You report chrg. 4–9 letter 4–4 $167.58; we credited letter 4–6 fees 167.58, 168.99. 141

Will report on other exceptions in a few days.

Very resp't., W. J. QUINLAN, JR.

Letter from Quinlan to Baldwin, May 18, 1887. E. V. R., special examiner.

United States Circuit Court, Southern District of Ohio, Western Division.

CHEMICAL NATIONAL BANK *vs.* DAVID ARMSTRONG, as Receiver of the Fidelity National Bank. } Stipulation. No. 4339.

It is agreed that if the complainant herein shall see fit to offer in evidence a printed copy of the bill of complaint and of the
270 evidence, or of any part of the evidence, filed in the cause of David Armstrong, receiver of the Fidelity national bank, *vs.* Brigg Swift and others, No. 4054, upon the docket of this court, and certified copies of any other pleadings, files, journal entries and docket entries in said cause, then no objection shall be taken by the defendant herein, because the whole of the record in said cause is not offered, nor as to said printed copies, because the same are not certified as true copies by the clerk, and all such objections are waived; but the right to make any and all such objections thereto is reserved by the defendant.

It is also agreed that the bill of complaint in said cause No. 4054, upon the docket of this court, was filed on the 18th day of Septem-

ber, 1887; that process was duly issued thereon and served upon the defendants named in said bill; that said defendants duly entered their several appearances in said action; that after the filing of sundry demurrers and pleas, issue was finally joined upon answers; that thereafter, on June 15, 1888, E. V. Ryan was appointed special examiner in said cause, and proceeded to hear evidence upon behalf of the plaintiff; that on January 29th, 1889, the evidence so taken was filed by said examiner, and that the same was afterwards printed by order of court in said cause.

Cincinnati, October 14th, 1895.

WM. WORTHINGTON,
Counsel for Complainant.
JOHN W. HERRON,
Counsel for Defendant.

Endorsed on back: 4339. United States circuit court, so. district of Ohio, west. div. Chemical National Bank *vs.* David Armstrong, as receiver, etc. Stipulation as to files in No. 4054 in this court.

271 Circuit Court of the United States, Southern District of Ohio, Western Division.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio, Complainant, *vs.* BRIGGS SWIFT, EDWARD L. HARPER, WILLIAM H. Chatfield, Henry Pogue, Albert P. Gahr, James H. Mathews, Eugene Zimmerman, Ammi Baldwin, and Benjamin E. Hopkins, Respondents.	In Chancery. Bill.

To the judges of the circuit court of the United States for the southern district of Ohio, western division:

1. David Armstrong brings this his bill and says that the Fidelity National Bank of Cincinnati, Ohio, was a national bank, duly organized and incorporated under the acts of Congress, and doing business in the city of Cincinnati, Hamilton county, Ohio.

2. Complainant further says that he is a citizen and resident of the State of Ohio, and that at and before the 27th day of June, A. D. 1887, the Comptroller of the Currency found the said banking association had become insolvent; and thereupon, this complainant was duly appointed by the Comptroller of the Currency, and became duly qualified as, the receiver of the said The Fidelity National Bank of Cincinnati, Ohio, and entered into possession of its property and assets, and has ever since been in possession thereof, as such receiver, for the purpose of administering the same in pursuance of the acts of Congress.

3. The complainant further says that the said The Fidelity National Bank of Cincinnati became and was incorporated on or about the 1st day of March, A. D. 1886; and the said Briggs Swift,

Edward L. Harper, William H. Chatfield, Henry Pogue, Albert P. Gahr, James H. Mathews, Eugene Zimmerman, Ammi Baldwin and Benjamin E. Hopkins, all of whom are citizens and residents of the State of Ohio, became and were duly elected and qualified as directors of said banking association; and the defendant, Briggs Swift, became and was president of said banking association; and the said E. L. Harper became and was vice-president of said association; and the said Ammi Baldwin became and was cashier of said association;
and the said Benjamin E. Hopkins became and was assist-
272 ant cashier of said banking association; and the said board of directors of said banking association, and its officers as aforesaid, had the charge and management of all the property and affairs and business of said banking association at the times hereinafter mentioned.

4. The complainant further says that said Briggs Swift, president; E. L. Harper, vice-president, and Ammi Baldwin, cashier, and Benjamin E. Hopkins, assistant cashier, the officers of said association, did knowingly permit the total liabilities to said association of a certain firm known as "Wilshire, Eckert & Company," also doing business under the firm name of "J. W. Wilshire & Company," and composed of Joseph W. Wilshire and Howard Eckert, and doing business in the city of Cincinnati and State of Ohio, for money borrowed, including in the liabilities of said company or firm the liabilities of the several members thereof, to exceed one-tenth part of the amount of the capital stock of such association actually paid in, not including in said indebtedness the discount of bills of exchange drawn in good faith against actually existing values, nor the discount of commercial or business paper actually owned by the said firm of Wilshire, Eckert & Company, and the several members thereof.

5. The complainant further says that the said banking association was found by the Comptroller of the Currency, on the 20th day of June, A. D. 1887, to be utterly insolvent, and that the indebtedness of the said Wilshire, Eckert & Company, and of the individual members of said firm at that time, for money borrowed by said firm and the individual members of said firm, consisted of the following sums, incurred at the dates named, to wit:

1887.			
Jan.	31.	Upon check on First nat. bank, Cin'ti, payable to J. W. Wilshire.....	$17,500 00
Feb.	15.	Upon check of J. W. Wilshire & Co. on Merchants' nat. bank payable to Wilshire, Eckert & Co.....	16,500 00
1886.			
March	20.	Upon loan of that date.....	7,500 00
March	24.	Upon loan of that date.....	4,200 00
April	21.	Upon check on First nat. bank, Cin'ti, payable to J. W. Wilshire.....	6,000 00
May	21.	Upon note, ditto.....	16,178 40
Oct.	7.	Upon note, ditto	6,000 00

273

Oct.	9.	Upon loan, ditto	15,000 00
Oct.	11.	Upon note, ditto	2,000 00
Oct.	12.	Upon note, ditto	11,500 00
Nov.	29.	Upon note, ditto	8,500 00
1887.			
Feb.	1.	Upon check to J. W. Wilshire & Co. of that date	8,756 92
Feb.	7.	Ditto	6,500 00
Feb.	9.	Loaned to Wilshire, Eckert & Co. upon a note of that date	60,000 00
March	17.	Upon check of that date	95,000 00
March	20.	Upon check of that date	55,600 00
March	24.	Upon check of that date	26,410 00
April	5.	Upon note of that date	34,458 75
April	16.	Upon note of that date	8,200 00
April	28.	Upon check of that date	100,000 00
April	30.	Upon check of that date	100,000 00
May	5.	Upon note of that date	34,779 38
May	7.	Upon check of that date	15,000 00
May	28.	Upon check of that date	250,000 00
May	31.	Upon check of that date	100,000 00
May	31.	Upon check of that date	75,000 00
June	2.	Upon check of that date	75,000 00
June	13.	Upon draft of that date	90,000 00
June	14.	Upon draft of that date	200,000 00
		Making in the aggregate the sum of.	$1,446,083 45

6. And the complainant says, that the aforesaid liabilities of Wilshire, Eckert and Company, and of the several members thereof, for money borrowed, were contracted with the knowledge and assent of each of the said directors, or if either of said directors failed to have actual knowledge thereof, that such director was grossly negligent of his duty in the management of the affairs of said bank, in failing to examine the books of accounts and evidences of indebtedness held by said bank during all the period in which said liabilities were being contracted, and in failing to exercise the slightest diligence or make the slightest investigation of the conduct of the business of said bank; and that any investigation of the affairs of said bank, or any examination of its books and the evidences of indebtedness held by said bank, would at any time during that period have disclosed to either of said officers or directors, that said liabilities were incurred, and the amounts and the extent thereof.

7. This complainant further says, that the said Wilshire,
274 Eckert and Company, and the individual members of said firm, and the makers or endorsers of all of the notes mentioned as given for money loaned to the said Wilshire, Eckert and Company, or to the members of said firm, were and are, altogether insolvent; and that said moneys have been totally lost to said banking association; that said Wilshire, Eckert and Company were

residents of Cincinnati, Ohio, and were at any of the times during which said indebtedness was being contracted, well known in the community, as being of little or no responsibility or means, and altogether irresponsible for, and unable to meet or discharge, any part of said liability in excess of the one-tenth of the amount of the capital stock of said association actually paid in, and that said loans were in violation of the law in that behalf, and were permitted and allowed to be made and contracted by the said directors and officers and each of them, in gross and willful disregard of their duty as such directors and officers, and to the loss and damage of said association in the full amount of said loans.

8. And complainant further says, that the respondent, E. L. Harper, vice-president of said association, was a member of the firm of E. L. Harper and Company; the individual members of said firm were the said E. L. Harper, George Clymer, and W. H. Harper; and the said E. L Harper was also the sole owner of the stock of the company known as "the Riverside iron and steel works," which claimed to be an incorporated company under the laws of Ohio, but which was in fact a company that had never complied with the laws of Ohio to become incorporated; that never had any *bona fide* capital stock, never had any property, and was organized for the purpose of presenting a corporate name in which, and under cover of which the said E. L. Harper and the said E. L. Harper and Company transacted business; and the said E. L. Harper was the principal owner of the capital stock of Swift's iron and steel works, which was a corporation organized and doing business in the State of Kentucky, of which corporation the said E. L. Harper was president, and the employees and representatives of the said E. L Harper were by him selected and constituted the directors of said corporation.

9. And the complainant further says, that the said Briggs Swift, president, E. L. Harper, vice-president, Ammi Baldwin, cashier, and Benjamin E. Hopkins, assistant cashier, the officers of said association, the Fidelity National Bank of Cincinnati, Ohio, did knowingly permit the total liabilities of the said E. L. Harper and Company, for money borrowed, including in the liabilities of
275 said company or firm the liabilities of the several members thereof, to exceed one-tenth part of the amount of the capital stock of said association actually paid in, not including in said indebtedness the discount of bills of exchange drawn in good faith against actually existing values, nor the discount of commercial or business paper actually owned by the said firm of E. L. Harper and Company or the several members thereof.

10. Complainant further says, that the indebtedness of the said E. L. Harper and Company and of the individual members of said firm, on the 20th day of June, A. D. 1887, for money borrowed by said firm and the individual members of said firm, consisted of the following sums incurred at the dates named, to wit:

1886.			
Oct.	21.	Of a call loan contracted in the name of the Riverside iron and steel works.....	$52,557 80
1887.			
Jan.	11.	Note of said R. I. & S. works discounted for E. L. Harper & Co...	4,834 67
Feb.	4.	Note of said R. I. & S. works, discounted for E. L. Harper & Co.....	3,781 16
Feb.	5.	Note of Licking Iron Co., discounted for E. L. Harper & Co.....	3,859 40
Jan.	13.	Note of the Latrobe Coal and Iron Co., discounted for E. L. Harper & Co	3,914 36
March	16.	Ditto...	3,147 67
March	24.	Ditto.....	2,985 86
March	25.	Ditto.....	1,487 63
March	26.	Ditto...	2,852 88
April	1.	Ditto.....	2,489 65
1886.			
Dec.	18.	Note of the Licking Iron Co., discounted for E. L. Harper.....	2,988 00
Dec.	24.	Ditto.....	3,428 00
1887.			
Jan.	15.	Ditto.....	3,740 00
Jan.	16.	Ditto.....	2,950 50
Jan.	19.	Ditto.....	3,228 00
Jan.	20.	Ditto.....	2,255 20
Jan.	22.	Ditto.	4,325 40
Jan.	29.	Ditto.....	3,557 00
Feb.	3.	Ditto...	4,217 14
276			
Feb.	9.	Ditto.....	3,154 00
March	17.	Ditto...	4,102 99
March	19.	Ditto.....	3,064 33
		Amount carried forward.....	$122,921 64
		Amount brought forward.....	$122,921 64
March	24.	Note of the Licking Iron Co., discounted by E. L. Harper.....	2,460 78
March	30.	Ditto.....	2,591 62
March	14.	Call loan of H. S. Bundy, discounted for E. L. Harper.....	50,000 00
March	14.	Ditto.....	50,000 00
April	28.	Note of Whitely, Fassler & Kelly, disc'd for E. L. Harper & Co.....	5,480 10
April	21.	Ditto...	5,420 71
April	21.	Ditto.....	5,330 44
April	28.	Ditto.....	5,891 04
May	3.	Ditto	5,580 09

May	3.	Ditto	5,317 00
May	4.	Ditto	4,820 03
1886.			
Dec.	27.	Note of the Wellston Foundry & Machine Co., discounted for E. L. Harper & Co.	2,312 72
1887.			
Feb.	12.	Ditto	1,585 70
March	17.	Ditto	2,483 27
April	11.	Ditto	2,950 25
Jan.	4.	Note of the Catoctin Iron Co	3,590 50
Jan.	10.	Ditto	3,900 00
Feb.	7.	Ditto	3,175 00
Jan.	11.	Note of the Riverside iron & steel works	4,834 67
Feb.	4.	Ditto	3,781 16
Jan.	20.	Note of the Eliza Furnace & Coal Co	2,563 40
Jan.	24.	Ditto	3,608 88
Feb.	9.	Note of the Standard Nail & Iron Co	2,067 11
Feb.	12.	Note discounted for same	4,786 22
March	7.	Note of Swift's iron & steel works, endorsed by E. L. Harper	5,000 00
April	30.	Ditto	10,000 00
April	30.	Ditto	10,000 00
April	30.	Ditto	10,000 00
277			
May	3.	Ditto—discounted for E. L. Harper	25,000 00
May	18.	Ditto—endorsed for E. L. Harper	10,000 00
May	27.	Ditto	10,000 00
June	8.	Ditto	5,000 00
June	15.	Upon a check drawn by E. L. Harper	1,683 08
		Making in aggregate the sum of...	$394,135 41

11. This complainant further says, that the said E. L. Harper and the officers and directors of the said association did knowingly permit the total liabilities of the said Swift's iron & steel works to the said association for money borrowed (in addition to the money loaned upon the paper of the said Swift's iron and steel works, as hereinbefore set forth, and upon which said Swift's iron & steel works were liable to said banking association), to exceed one-tenth part of the amount of the capital stock of said banking association actually paid in, not including in said indebtedness the discount of bills of exchange drawn in good faith against actually existing values, nor the discount of commercial or business paper actually owned by the said Swift's iron & steel works; and that the indebtedness of the said Swift's iron & steel works for money by it borrowed on the 20th day of June, A. D. 1887, in addition to its indebtedness as hereinbefore set forth, consisted of the following sums incurred at the dates named, to wit:

1886.			
Dec.	10.	Note of Whitely, Fassler & Kelly, discounted for Swift's iron & steel works..	$4,218 72
Dec.	13.	Ditto....	3,218 00
Dec.	15.	Ditto....	4,873 74
April	23.	To H. C. Darley, Kansas City, Mo	1,212 91
May	23.	Ditto....	1,433 73
Sept.	1.	Call loan made said Swift's iron & steel works...	25,000 00
Sept.	1.	Ditto....	12,000 00
Sept.	1.	Demand loan....	40,000 00
1887.			
March	3.	Draft on W. S. Mallory & Co., Chicago, Ills....	903 45
April	4.	Draft on Sidney Steel Scraper Co., Sidney, O....	1,286 33
April	9.	Draft on Gille & Van Peyman, Kansas City, Mo....	741 47
278			
May	10.	Ditto....	465 25
May	27.	Draft on Hanika Iron Fence Co., Springfield, O....	775 91
May	23.	Loan made to Swift's iron & steel works, upon a check drawn on the German national bank....	62,000 00
May	23.	Loan made to Swift's iron & steel works, upon a check drawn on S. Kuhn & Sons.	59,000 00
		Of a loan made to Swift's iron & steel works at some date which this complainant does not know and is unable to state, but which is represented by a check given in place of the original evidence of indebtedness held for said loan, which check is dated June 18, 1887....	35,000 00
		Making in the aggregate the sum of.	$252,129 51

12. And this complainant says that the aforesaid liabilities of the said E. L. Harper & Company, and of the several members thereof, and of Swift's iron & steel works, for money borrowed, were contracted with the knowledge and assent of each of the said directors, or if either of said directors failed to have actual knowledge thereof, that said director was grossly negligent of his duty in the management of the affairs of said bank, in failing to examine the books or accounts and evidences of indebtedness held by said bank, during all the period in which said liabilities were being contracted, and in failing to exercise the slightest diligence or make the slightest investigation of the conduct of the business of said bank; and that any investigation of the affairs of said bank or examination of its books and evidences of indebtedness held by said bank, would, at any time during that period, have disclosed to either of said officers

or directors that said liabilities were incurred and the amount and extent thereof.

13. The complainant further says that the said E. L. Harper & Company, and the individual members of said firm, and the makers or endorsers of all the notes mentioned as being given for money loaned to the said E. L. Harper & Company, and the individual members of said firm, and Swift's iron & steel works, and the makers or endorsers of all of the notes mentioned as being
279 given for money loaned to the said Swift's iron & steel works, were and are altogether insolvent, and that said moneys have been wholly lost to the said banking association. That the said E. L. Harper was the vice-president of said banking association at each and all of the times during which said indebtedness was being contracted; that he was permitted by the directors of said bank to manage its affairs and loan its money to himself, and to the firm of which he was a member, and to the various corporations named, of which he was the principal owner, without any supervision, investigation or control of his management of the business of said banking association in that behalf, or of the responsibility of any of the persons making or endorsing said notes or checks, and without said banking association having or receiving any security for the payment of said indebtedness, and that each and all of the parties to said notes and checks, either as makers or endorsers, are wholly insolvent, and the moneys so loaned to said parties, as aforesaid, in excess of one-tenth of the amount of the capital stock of said association actually paid in, were loaned in violation of the law in that behalf; and that said indebtedness was, by the said directors and officers, and each of them, permitted and allowed to be made and contracted in gross and willful disregard of their duty as such directors, and said money has thereby become wholly lost to said banking association.

14. The complainant further says that the said Briggs Swift, president; E. L. Harper, vice-president; Ammi Baldwin, cashier, and Benjamin E. Hopkins, assistant cashier, the officers of said association, did knowingly permit the total liabilities to said association of a certain corporation under the laws of Ohio, by the name of Whitely, Fassler & Kelly, and doing business in the city of Springfield and State of Ohio, for money borrowed, to exceed one-tenth part of the amount of the capital stock of said banking association actually paid in, not including in said indebtedness the discount of bills of exchange drawn in good faith against actually existing values, nor the discount of commercial or business paper actually owned by said corporation of Whitely, Fassler & Kelly.

15. And complainant further says that the said indebtedness of the said Whitely, Fassler & Kelly, on the 20th day of June A. D. 1887, for money borrowed by said corporation, consisted of an overdraft of the account of said Whitely, Fassler & Kelly in said banking association, by divers checks made and drawn by said
280 Whitely, Fassler & Kelly and paid by said banking association between the 1st day of May, A. D. 1887, and the 20th day of June, A. D. 1887, aggregating the sum of $121,604.90; and

in addition to the indebtedness of said Whitely, Fassler & Kelly, as hereinbefore set forth, the following sums loaned to said corporation at the dates named, to wit:

Of the notes of said Whitely, Fassler & Kelly, discounted for said corporation and endorsed by E. L. Harper & Co. for said Whitely, Fassler & Kelly.

1887.			
Feb.	7.	Note for	$2,650 00
Feb.	14.	Note for	3,840 20
Feb.	21.	Note for	4,630 10
Feb.	21.	Note for	4,270 93
Feb.	28.	Note for	4,883 30
Feb.	28.	Note for	4,883 40
Feb.	28.	Note for	5,850 00
Feb.	28.		5,200 00
March	28.	Note for	5,432 00
April	5.	Note for	5,300 00
April	5.	Note for	3,800 00
April	18.	Note for	2,500 00
April	18.	Note for	4,740 00
May	2.	Note for	2,620 40
May	2.	Note for	2,340 10
May	2.	Note for	3,911 07
May	2.	Note for	3,107 90
May	4.	Note for	4,280 00
May	4.	Note for	2,210 49
May	4.	Note for	4,710 09
May	4.	Note for	4,520 00

And of the notes of the Champion Machine Company endorsed by said Whitely, Fassler & Kelly, discounted for said last-named corporation, as follows, to wit:

1887.			
Jan.	24.	Note for	4,891 04
Feb.	7.	Note for	5,000 00
Feb.	7.	Note for	4,280 00
Feb.	21.	Note for	4,500 00
Feb.	21.	Note for	5,620 19
Feb.	28.	Note for	4,500 00
March	28.	Note for	5,451 00
April	5.	Note for	4,300 00
April	5.	Note for	5,500 00
April	18.	Note for	4,370 00

281

April	18.	Note for	3,500 00
April	18.	Note for	5,872 20
April	18.		4,500 00
April	26.		4,500 00

April	26.	Note for	5,000 00
May	2.	Note for	5,610 20
May	2.	Note for	5,200 00
May	2.	Note for	4,500 00
May	2.	Note for	3,000 00
May	2.	Note for	3,240 00
		Amount carried forward	$179,014 52
		Amount brought forward	$179,014 52
May	4.	Note for	4,500 00
May	4.	Note for	3,750 00
May	4.	Note for	4,231 00
May	4.	Note for	4,650 00
May	4.	Note for	5,480 10
May	4.	Note for	3,800 00
June	2.	Note for	3,841 08
June	2.	Note for	4,000 00
June	2.	Note for	5,000 00
June	2.	Note for	4,273 18
June	2.	Note for	5,000 00
June	7.	Note for	4,520 10
June	7.	Note for	6,720 00
June	7.		4,780 20
June	7.	Note for	5,817 00
June	7.	Note for	4,000 00
June	7.	Note for	3,800 00
		Add amount of overdrafts as above	121,604 90
		Making in the aggregate the sum of	$378,782 08

16. And this complainant says that the aforesaid liabilities of the said Whitely, Fassler & Kelly were contracted with the knowledge and assent of each of the said directors, or if either of said directors failed to have actual knowledge thereof, that said director was grossly negligent of his duty in the management of the affairs of said bank in failing to examine the books of accounts or evidences of indebtedness held by said bank during all the period in which said liabilities were being contracted, and in failing to exercise the slightest diligence or make the slightest investigation of the conduct of the business of said bank, and that any investigation of
282 the affairs of said bank or any examination of its books and of the evidences of indebtedness held by said bank, would at any time during that period have disclosed to either of said officers or directors that said liabilities were incurred and the amounts and the extent thereof.

17. And this complainant further says that the said Whitely, Fassler & Kelly, the makers or endorsers of any of the notes mentioned as being given for money loaned to the said Whitely, Fassler & Kelly, were and are, altogether insolvent, and that said moneys have been totally lost to said banking association; and that the

moneys so loaned to the said Whitely, Fassler & Kelly in excess of the amount of one tenth of the capital stock of the said association actually paid in, were loaned in violation of the law in that behalf; and that said indebtedness was permitted and allowed to be made and contracted by the said directors and officers, and each of them, in gross and willful disregard of their duty as such directors and officers; and said money has thereby become wholly lost to said banking association.

18. The complainant further alleges that the said Briggs Swift, president; E. L. Harper, vice-president; Ammi Baldwin, cashier, and Benjamin E. Hopkins, assistant cashier, the officers of said association, did knowingly make the loans and discount the paper upon the security of the shares of its own capital stock, at the dates and in the sums following to wit:

1887.			
April	18.	Amann & Co.	$1,300 00
Feb.	26.	W. H. Broadwell	6,250 00
March	7.	Wm. H. Broadwell	4,893 75
June	11.	Dunlap & Co.	4,500 00
May	9.	Dunlap & Co.	1,200 00
May	20.	Dunlap & Co.	2,375 00
April	22.	Dunlap & Co.	1,450 00
April	5.	D. A. Fitzpatrick	1,350 00
April	27.	W. D. Gatchell	3,987 00
April	2.	W. D. Gatchell	1,000 00
May	9.	W. D. Gatchell	1,000 00
			$29,296 75
		Amount brought forward	$29,296 75
June	8.	W. D. Gatchell	900 00
May	16.	W. D. Gatchell	900 00
May	7.	A. J. Gilligan	1,080 00
June	18.	Benj. Hopkins	1,000 00
283			
April	5.	W. P. Harris	12,500 00
April	7.	Frederick Heguer	2,500 00
April	5.	W. H. Stanagef	5,400 00
May	25.	E. T. Sprague	2,500 00
March	28.	H. B. Wells	5,500 00
		Making in the aggregate the sum of..	$56,576 75

19. Complainant further says that the aforesaid liabilities to said association secured by the shares of its own capital stock, were for money borrowed from said association, and were contracted with the knowledge and assent of each of the said directors, or if either of said directors failed to have knowledge thereof, that said director was grossly negligent of his duty in the management of the affairs of said bank in failing to examine the books of accounts or evi-

dences of indebtedness held by said bank during all the period in which said liabilities were being contracted, and in failing to exercise the slightest diligence or make the slightest investigation of the affairs of said bank, and that any investigation of the affairs of said bank or examination of the books of accounts and evidences of indebtedness held by said bank, would, at any time during said period, have disclosed to either of said officers or directors that said liabilities were incurred and the amount and the extent thereof, and that they were secured by the shares of the capital stock of said association, and not otherwise. And the complainant avers that such security was not necessary to be taken by said association to prevent loss upon any debt previously contracted in good faith, and that the makers and endorsers of the notes mentioned as given for money so loaned by said association upon the security of its own capital stock, are altogether insolvent, and that the said capital stock, by reason of the premises set forth in this petition, has become wholly valueless, and that said moneys have been totally lost to said banking association; and the petitioner says that said loans were in violation of the law in that behalf, and were permitted and allowed to be made and contracted by the said directors and officers, and each of them, in gross and willful disregard of their duty as such officers and directors, and to the loss and damage of the said association in the full amount of said loans.

20. And complainant further avers that the said E. L. Harper, vice-president of said association, was permitted by the directors of said bank to manage the affairs of said banking association
284 and to have the charge and control of its moneys and other assets, without any investigation or control of his management of the business of said banking association; and that the board of directors of said association did not require from the said E. L. Harper, or any other of the officers of said banking association, any bonds for the faithful performance of his duties as such officer of said association, nor any other security against the misappropriation by such officer of the moneys and assets of the association as, according to usage in the conduct of such business, and otherwise, it was right and proper should have been required of them.

21. And the complainant further avers that at divers times between the 1st day of January, A. D. 1887, and the 20th day of June, A. D. 1887, the said E. L. Harper did embezzle, misappropriate and convert to his own use very large sums of money belonging to said association, the precise dates and amounts of such embezzlement and misappropriation the complainant does not know and is unable to state, but he avers the aggregate amount thereof to be not less than the sum of $500,000. Complainant further avers that between the said dates, to wit, the 1st day of January, A. D. 1887, and the 20th day of June, A. D. 1887, the said E. L. Harper, Ammi Baldwin and Benjamin E. Hopkins, did issue the drafts, bills of exchange and other obligations of said banking association for which the said association received no consideration, but which the said E. L. Harper and Benjamin E. Hopkins misappropriated and converted to their own use in divers speculations in wheat, in which the said

E. L. Harper and Benjamin E. Hopkins, with other persons, were, during that period, engaged.

22. Complainant further says that the said E. L. Harper and Benj. E. Hopkins were engaged during the period between the 1st day of January, A. D. 1887, and the 20th day of June, A. D. 1887, with divers other persons, in speculating in wheat in the city of Chicago, in the State of Illinois, purchasing and contracting for more than thirty million bushels of wheat, upon which the said parties were advancing margins and borrowing money for the principal part of the prices agreed to be paid therefor.

23. The complainant avers that a large part of said purchases were gambling transactions, and complainant avers that the said Briggs Swift and the other respondents, directors of said banking association, had notice and knowledge that the said E. L. Harper and Benjamin E. Hopkins were engaged in said speculations; and complainant avers that the moneys hereonbefore alleged to have been loaned the firm of Wilshire, Eckert & Co., and the in-
285 dividual members of said firm, and the firm of E. L. Harper & Company, and to the companies and corporations of which the said E. L. Harper was a member or principal owner, and to the said Whitely, Fassler & Kelly, as well as the moneys, drafts and other obligations of said company, hereinbefore alleged to have been embezzled and misappropriated by the said E. L. Harper and Benjamin E. Hopkins, were, to a large extent, used and lost by the said E. L. Harper and Benjamin E. Hopkins, with others, in their said speculations in wheat.

Complainant further says that the said E. L. Harper, in connection with the said Ammi Baldwin and Benjamin E. Hopkins, had been theretofore, and for many years prior to the transactions in this petition alleged, engaged in excessive and reckless speculations in wheat and other commodities, and were well known to the president and directors of said association to be excessive and reckless speculators, and wholly unfit to have the charge, management and control of the moneys, assets and affairs of the said The Fidelity National Banking Association; and complainant avers that by reason of said facts and the knowledge thereof, the said president and directors were put upon inquiry as to the management of the affairs of said banking association, and the safe keeping and investment of its moneys and other properties, during the whole time, during which the money of said association was being loaned and embezzled and misappropriated as hereinbefore set forth, yet the said president and the said directors, and each of them, in gross and willful disregard of their duty as such directors, wholly failed to exercise the slightest diligence, or make the slightest investigation of the conduct of the business of said bank; and that any investigation of the affairs of said bank, or examination of its books and of the evidences of indebtedness held by said bank, would have disclosed to the said president, or either of said directors, that the moneys of said bank were being loaned, and liabilities to said bank were being contracted, in violation of the law, and that the affairs of said bank were being mismanaged and its moneys and assets were

being embezzled and misappropriated in the manner hereinbefore set forth; and that the exercise of proper care and diligence in the discharge of their duty as president and as such directors, would have prevented the losses described to said banking association.

24. Complainant further avers, that on the 16th day of May, A. D. 1887, the said association, professing to comply with the act
286 of Congress requiring reports exhibiting the resources and liabilities of national banking associations to be made to the Comptroller of the Currency, did make a report to the Comptroller of the Currency of the resources and liabilities of said association on the 13th day of May, 1887, as follows, to wit:

Report of the Condition of the Fidelity National Bank at Cincinnati, in the State of Ohio, at the Close of Business on the 13th Day of May, 1887.

Resources.

Loans and discounts		$4,303,021 25
Overdrafts		315 42
U. S. bonds to secure circulation, par value, four per cent		100,000 00
U. S. bonds to secure deposits, par value, four per cent		340,000 00
U. S. bonds on hand, par value, four per cent		18,050 00
Other stocks and bonds on hand, market value		18,122 50
Furniture and fixtures		11,927 95
Current expenses and taxes paid		39,475 86
Premiums on bonds for circulation, market value	$29,000 00	
Premiums on other United States bonds, market value	104,834 00	
		133,834 00
Due from approved reserve agents	376,105 78	
Due from other nat'l banks	443,227 31	
Due from private banks and bankers	125,592 13	
		944,925 22
Checks and cash items	5,613 80	
Exchange for clearing-house	73,743 45	
Bills for other banks	153,120 00	
Nickels and cents	73 49	
Trade dollars	306 00	
Gold coin	57,324 50	
Silver coin	25,683 20	
Silver treasury certificates	226,310 00	
Legal-tender notes	630,000 00	
Five per cent. redemption fund	4,500 00	
		1,176,674 44
Total		$7,086,346 64

287 Liabilities.

Capital stock paid in		$1,000,000 00
Surplus fund		50,000 00
Undivided profits		79,282 57
Circulating notes from comptroller		90,000 00
Individual deposits	$2,387,647 79	
Demand certificates on deposits	29,386 29	
Certified checks	7,433 71	
Cashier's checks outstanding	50,854 12	
U. S. deposits	300,000 00	
Due to national banks	2,213,545 19	
Due to bank and bankers	878,196 97	
		5,867,064 07
Total		$7,086,346 64

STATE OF OHIO, *Hamilton County,* } *ss*:

I, Ammi Baldwin, cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

AMMI BALDWIN, *Cashier.*

Sworn and subscribed before me this 16th day of May, 1887.

A. W. GOLDSMITH,
Notary Public, Hamilton County, Ohio.

Correct.
Attest:

E. L. HARPER,
HENRY POGUE,
WM. H. CHATFIELD,
Directors.

25. The complainant avers, that the said statement was sworn to by the said Ammi Baldwin, as cashier, before A. W. Goldsmith, a notary public thereunto duly authorized, and was attested as correct by the said E. L. Harper, Henry Pogue and William H. Chatfield; the complainant further says, that the foregoing statement was false in fact, in that among the resources of said banking association, there was not due from—

Approved reserve agents the sum of	$376,105 78
Nor due from other national banks	443,227 31
Nor did said banking association have bills of other national banks	25,683 20
Nor gold coin in the sum of	57,324 50
Nor silver coin in the sum of	25,683 20
Nor silver Treasury certificates in the sum of	226,310 00
Nor legal-tender notes in the sum of	630,000 00

288 On the contrary, the complainant avers, there was in fact among the resources of said banking association at the close of business on the 13th day of May, 1887, only $404,979.76 in money,

including nickels and cents, trade-dollars, gold coin, silver coin, silver Treasury certificates and legal-tender notes.

26. And complainant avers that the said false report, after its return to the Comptroller of the Currency, as aforesaid, was caused by the said president and board of directors of said banking association, to be published in the daily papers in the city of Cincinnati; and complainant further avers, that the slightest examination of said report and of the books and accounts of said banking association, would have disclosed to the said president and board of directors, that said report was wholly false and its resources at that time, and would have disclosed to said board of directors that the affairs of said bank were being mismanaged, and its moneys and assets misappropriated and squandered as hereinbefore set forth. And complainant avers, that by reason of said false report and the publication thereof, many depositors and others became creditors of said banking association.

27. And complainant further avers, that before the transactions and dealings hereinbefore set forth the said banking association, had, and did, a large and profitable business, that was of great value to the said association and its shareholders, but that by reason of the mismanagement of its affairs, by the said defendants, the misappropriation of its means and unlawful loaning of its moneys, as hereinbefore described, and the negligence and misconduct of its officers and board of directors and each of them as aforesaid, the said banking association became wholly insolvent and its legitimate business was completely wrecked and lost, so that its assets and effects, including the liabilities of its stockholders as provided by law, are wholly inadequate to the discharge of the debts and liabilities of said banking association to its depositors and other creditors, which amount in the aggregate to more than five millions of dollars.

28. In consideration whereof, the complainant prays, that the said respondents may appear and answer all and singular the matters and things hereinbefore set forth, and that the court will cause an account to be taken of the loss and damage to said banking association, its shareholders and creditors, sustained by reason of the unlawful acts, misconduct and negligence of the said respondents and each of them as hereinbefore set forth, and that a judgment and decree of this court may be rendered against the said respondents and each
289 of them in his personal and individual capacity for said loss and damage as aforesaid, as the same may be found by this court, and that this complainant may obtain such other and further relief as to this honorable court may seem meet or as equity may require; and your complainant further prays that your honors will grant unto the complainant, the writ of subpœna issuing out of and under the seal of this court, to be directed to the said respondents, Briggs Swift, E. L. Harper, Wm. H. Chatfield, Henry Pogue, Albert P. Gahr, James H. Mathews, Eugene Zimmerman and Ammi Baldwin and Benjamin E. Hopkins, commanding them and each of them by a certain day and under a certain penalty therein named, to appear before your honors in the circuit court of the United States, for the southern district of Ohio, western division, then and

there to answer the premises and abide the order and decree of the court.

E. W. KITTREDGE,
W. B. BURNET,
Solicitors for Complainant.

United States Circuit Court, Southern District of Ohio, Western Division.

DAVID ARMSTRONG, Receiver, etc., *vs.* BRIGGS SWIFT, ALBERT H. CHATFIELD, and FREDERICK Gilbert, Executors of William H. H. Chatfield, Deceased; Henry Pogue, Eugene Zimmerman, E. L. Harper, J. H. Mathews, and A. P. Gahr, Survivors.	No. 4054.

And now comes David Armstrong, the plaintiff in this cause, and states that the defendants, Briggs Swift, the executors of William H. Chatfield, Henry Pogue and Eugene Zimmerman have made a written proposition to him to pay the sum of four hundred and fifty thousand dollars in full settlement and satisfaction by way of compromise of matters and claims in controversy in this cause against them a copy of which proposition is herewith filed and made a part of this petition.

Plaintiff further states that said proposition has been submitted to the Comptroller of the Currency and its acceptance recommended by plaintiff and also by his attorneys.

290 Said proposition has also received the approval of a number of the largest creditors of the said Fidelity national bank. Said proposition has been fully considered by the said Comptroller of the Currency, and he has authorized this plaintiff to apply to this court for authority to accept and consummate said offer of settlement after the creditors of said Fidelity national bank have had notice of the filing of this petition, and have had an opportunity to be heard on the question of its acceptance—a copy of which authority is herewith filed as part of this petition.

Plaintiff states that he believes it to be for the interest of the trust represented by him that the said offer should be accepted and he, therefore, asks this court to order that the said application be heard on the day and hour to be fixed by this court; and that on such hearing this plaintiff be authorized to accept and consummate such offer of compromise, and for such other and further order in the premises as may be necessary and proper.

DAVID ARMSTRONG,
Receiver of the Fidelity National Bank of Cincinnati,
By KITTREDGE & WILBY,
JOHN W. HERRON,
His Attorneys.

Copy.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *March* 7, 1890.

David Armstrong, Esq., receiver of the Fidelity national bank, Cincinnati, Ohio.

SIR: I have carefully considered the memorandum, under date 4th inst. with respect to the compromise of a suit against the late directors of the Fidelity national bank, which was handed to me in person.

In view of the statements set forth as to the financial condition of each and every one of the defendants in the bill, and in view of other considerations also set forth and discussed orally with yourself and counsel, I will interpose no objection to your going before the court in the usual way with a petition setting forth all necessary facts, stating that many of the largest creditors of the trust
291 have given their consent in writing, and asking the court for an order, after creditors have been given a reasonable notice of the petition and day of hearing, under which you may proceed to effect a settlement in accordance with the terms submitted to, or as modified by the court.

Enclosure returned herewith.

Very respectfully, (Signed) E. S. LACEY,
Comptroller.

Handed to John W. Herron in person.

Copy.

Ramsey, Maxwell & Ramsey, attorneys-at-law.

CINCINNATI, *February* 24, 1890.

David Armstrong, Esq., receiver of the Fidelity national bank, Cincinnati, Ohio:

We hereby propose a compromise in settlement of all claims and demands asserted by you in the suit brought by you against Briggs Swift *et al.*, late directors of the Fidelity national bank, being No. 4054, in equity, U. S. circuit court, S. D. Ohio, upon the following terms.

The payment to you of the sum of $450,000.00 in full of all said demands. The sum to be paid by the several defendants—Swift, Pogue, Chatfield's estate, and Zimmerman, in proportions fixed between themselves.

Yours very truly,

(Signed) BRIGGS SWIFT,
By RAMSEY, MAXWELL & RAMSEY,
Ex'rs of Wm. H. Chatfield, Dec'd,
By JORDANS & JORDANS AND
RAMSEY, MAXWELL & RAMSEY.
EUGENE ZIMMERMAN,
By HERBERT JENNEY &
RAMSEY, MAXWELL AND RAMSEY.
HENRY POGUE,
By THOMAS McDOUGALL, *Att'y.*

I hereby recommend to the Comptroller of the Currency that the above offer to compromise the suit mentioned be accepted.

March 4, 1890.

(Signed) D. ARMSTRONG, *Rec.*

Approved:

KITTREDGE & WILBY,
JOHN W. HERRON,
Attorneys for Receiver.

March 4, 1890.

292 SOUTHERN DISTRICT OF OHIO, *ss:*

A true copy.

Attest:

[SEAL.]

B. R. COWEN, *Clerk*,
By JANIE W. F. COWEN,
Deputy Clerk.

Endorsed: No. 4054. United States circuit court, southern district of Ohio, western division. David Armstrong, rec'r, *vs.* Briggs Swift *et al.* Application for authority to compromise. Filed M'ch 12, 1890. B. R. Cowen, clerk. Fees, $1.55, paid. B. R. Cowem, clerk. Kittridge & Wilby, Jno. W. Herron, attorneys.

THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } *ss:*

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of February, being also the fourth day of that month, in the year of our Lord one thousand and eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

Present, the Honorable George R. Sage, district judge.

On Wednesday, the 12th day of March, A. D. 1890, among the proceedings had were the following, to wit:

DAVID ARMSTRONG, Receiver of the Fidelity National Bank,
vs.
BRIGGS SWIFT *et al.*

This day came the complainant and filed an application for authority to accept an offer of compromise of the above case as to Briggs Swift, the executors of William H. Chatfield, Henry Pogue and Eugene Zimmerman, and upon said application it is now ordered that the same be heard by this court on Tuesday, April 15, 1890, at 9.30 o'clock a. m., or as soon thereafter as will be convenient for the court; and that notice of said hearing be given to
293 all the creditors of said Fidelity national bank, who have proved their claims, or whose claims are in dispute, and to

all stockholders of record, by depositing in the mail, by said complainant, duly addressed to each of said creditors and stockholders, on or before March 15, 1890, notice of the time of the hearing of the said application as above set forth.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 18th day of September, A. D. 1895.

B. R. COWEN, *Clerk*,
By JANIE W. F. COWEN,
Deputy Clerk.

[SEAL.]

Endorsed: No. 4054. United States circuit court, southern district of Ohio, western division. David Armstrong, rec'r, *vs.* Briggs Swift *et al.* Certified copy of entry. Filed M'ch 12, 1890. B. R. Cowen, clerk. Fees, 75 cents, paid. B. R. Cowen, clerk.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April, being also the first day of that month, in the year of our Lord one thousand and eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

Present, the Honorable George R. Sage, district judge.

294 On Wednesday, the 16th day of April, A. D. 1890, among the proceedings had were the following, to wit:

DAVID ARMSTRONG, Receiver, }
vs. } No. 4054.
BRIGGS SWIFT ET AL. }

This day this cause came on to be heard upon the application of the complainant, David Armstrong, as receiver of the late Fidelity national bank, for authority to accept the offer of Briggs Swift, the executor of Wm. H. Chatfield, deceased: Eugene Zimmerman and Henry Pogue, defendants herein, to settle and compromise this cause and claim against them, by the payment in satisfaction and compromise thereof of the sum of four hundred and fifty thousand dollars ($450,000.00), and the court having considered the same, finds that due notice of the said application and its pendency and the

time of hearing the same was given to creditors and stockholders of said late Fidelity national bank, as required by the order of this court, and no creditor or stockholder having shown good cause to the court why the said compromise should not be made, and the prayer of said application granted, it is therefor- ordered and adjudged by the court that the settlement and compromise as asked in said application be granted and allowed, and that the said receiver, complainant herein, be, and he is hereby, authorized to accept and consummate said offer of four hundred and fifty thousand dollars, from said defendants hereinbefore named, in compromise, settlement and satisfaction of all claims at issue in this cause against said Briggs Swift, the estate of W. H. Chatfield, deceased; Eugene Zimmerman and Henry Pogue, and to receive said sum from them, together with interest until paid, on so much thereof as may not be paid within thirty days from and after the entry of this order, and upon the performance of this compromise and the payment in full of said sum, as aforesaid, they, the said Briggs Swift, estate of W. H. Chatfield, deceased; Henry Pogue and Eugene Zimmerman, shall be discharged from all liability for any claim or cause of action at issue in this cause. But this compromise and the foregoing order shall be without prejudice to the further prosecution of this cause against the other defendants, not parties to this compromise, and without prejudice to the liability, if any, of such other defendants, or either of them.

295 And as to costs, the court order- that the taxable costs of the cause to date, excluding docket fees, which are by agreement waived, shall be paid, one-half by the receiver and one-half by the compromising defendants aforesaid, each party having credit for such of said costs as have been paid by them respectively.

THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at the city of Cincinnati, Ohio, this 17th day of September, A. D. 1895.

B. R. COWEN, *Clerk,*
By JANIE W. F. COWEN,
Deputy Clerk.

Endorsed: No. 4054. United States circuit court, southern district of Ohio, western division. David Armstrong, rec'r, *vs.* Briggs Swift *et al.* Certified copy of entry. Filed Apr. 16, '90. B. R. Cowen, clerk. Z., 25. Fees, $1.05, paid. B. R. Cowen, clerk.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss*:

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April being also the first day of that month in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

Present, the Honorable George R. Sage, district judge.

296 On Monday the 19th day of May, A. D. 1890, among the proceedings had were the following, to wit:

DAVID ARMSTRONG, Receiver of the Fidelity National Bank,
vs.
BRIGGS SWIFT, Impleaded, &c.

This cause came on to be heard and on consideration of the same the court finds that the defendants, Briggs Swift, is indebted to the plaintiff on the agreement of compromise heretofore offered by him and accepted by the plaintiff under the authority of this court in the sum of three hundred thousand dollars with interest from the 16th day of May, 1890, and which sum he has failed to pay and that the plaintiff is therefore entitled to a judgment and execution against him for the said sum.

It is therefore ordered and adjudged that the plaintiff recover of the said defendant, Briggs Swift, the said sum and interest as aforesaid and one-half of the costs of this suit as taxed and that execution issue therefor.

This judgment is now rendered without prejudice to any further order in this cause that may become necessary to enforce the said compromise decree as heretofore entered, and all questions, about costs as between said Swift and the other defendants is reserved for future action.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss*:

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 18th day of September, A. D. 1895.

B. R. COWEN, *Clerk*,
By JANIE W. F. COWEN,
Deputy Clerk.

Endorsed: No. 4054. United States circuit court, southern district of Ohio, western division. David Armstrong, rec'r, *vs.* Briggs

Swift *et al.* Certified copy of entry. Filed May 19, 1890. B. R. Cowen, clerk. Fees, 75 cents, paid. B. R. Cowen, clerk.

297 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April, being also the seventh day of that month, in the year of our Lord one thousand eight hundred and ninety-one and of the Independence of the United States of America the one hundred and fourteenth.

Present, the Honorable George R. Sage, district judge.

On Wednesday, July 1, A. D. 1891, among the proceedings had were the following, to wit:

DAVID ARMSTRONG, Receiver, }
vs. } No. 4054.
BRIGGS SWIFT. }

This day came the plaintiff and Joseph C. Thoms and Herbert L. Brenneman, executors of Briggs Swift, deceased, and this day came also Mary S. Thoms, wife of said Joseph C. Thoms, and Eunice S. Brenneman, wife of said Herbert L. Brenneman, being the sole heirs-at-law and devisees of said Briggs Swift, deceased, and by consent of all said parties the judgment herein rendered is this day revived against the said heirs and executors. And thereupon the plaintiff, David Armstrong, receiver, acknowledged satisfaction of said judgment except as to the sum of $150,000 and it was agreed between the parties that the amount remaining due and unpaid on account thereof is the sum of $150,000 with interest from July 1, 1891, and execution is awarded therefor.

Thereupon came the said David Armstrong, receiver, and filed with the clerk an assignment of said judgment unto the Union Central Life Insurance Company of Cincinnati, Ohio.

J. C. THOMS.
MARY S. THOMS.
EUNICE S. BRENNEMAN.
H. L. BRENNEMAN.

298 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said court, at the city of Cincinnati, Ohio, this 17th day of September, A. D. 1895.

B. R. COWEN, *Clerk*,
[SEAL.] By JANIE W. F. COWEN,
Deputy Clerk.

Endorsed: No. 4054. United States circuit court, southern district of Ohio, western division. Armstrong, receiver, *vs.* Swift *et al.* Certified copy of entry. Filed July 1, 1891. B. R. Cowen, clerk. Fees, 75 cents, paid. B. R. Cowen, clerk.

THE UNITED STATES OF AMERICA, } *ss*:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Cincinnati, in said district, on the first Tuesday of October being also the second day of that month in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

Present, the Honorable George R. Sage, district judge.

On Friday the fourth day of January, A. D. 1895, among the proceedings had were the following, to wit:

Entry of Satisfaction and Dismissal as to the Estate of William H. Chatfield.

DAVID ARMSTRONG, Receiver, }
vs.
BRIGGS SWIFT ET AL. }

Now comes David Armstrong, receiver, complainant herein,
299 and acknowledged the receipt of one hundred thousand dollars and interest from the 16th day of April, 1890, paid to him by Albert H. Chatfield and Frederick Gilbert, executors of the last will and testament of William H. Chatfield, deceased, in full satisfaction of the proportionate share assumed by William H. Chatfield in the order of compromise herein entered on said 16th day of April in the year 1890; and thereupon, pursuant to said order of compromise, the complainant herein acknowledges satisfaction in full of all the latters in controversy herein, so far as they relate to the executors of the estate of said William H. Chatfield, deceased, and the bill of complaint is accordingly dismissed as against said executors.

This entry is made without prejudice to the proceeding as against other defendants not herein named.

THE UNITED STATES OF AMERICA, } *ss*:
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within and for the division and district aforesaid,

do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 17th day of September, A. D. 1895.

B. R. COWEN, *Clerk*,
By JANIE W. F. COWEN,
Deputy Clerk.

Endorsed: No. 4054. United States circuit court, southern district of Ohio, western division. Armstrong, receiver, *vs.* Swift *et al.* Certified copy of entry. Filed Jan. 4, 1895. B. R. Cowen, clerk. Fees, 75 cents, paid. B. R. Cowen, clerk.

In the Circuit Court of the United States.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank,
vs.
BRIGGS SWIFT ET AL. } No. 4054.

Now comes Catherine Brooks, lately adjudged by the court
300 as a stockholder to the number of 13 shares, upon which she has at this term (April term), 1890, been adjudged to pay and has paid $1,387.10 *dollars*, and is liable for the costs of the said suit No. 4280. And she says that she purchased her said stock on the 18th day of May, 1887, from the said Fidelity national bank, paying therefor the sum of $2,015.00, and that in view of her said claim aforesaid, protests against the settlement and compromise herein proposed, and enters her objection thereto.

PORTER AND RENDIGS AND
WM. E. BROOKS,
Attorneys for Catherine Brooks.

SOUTHERN DISTRICT OF OHIO, *Western Division*, } *ss:*

A true copy of the original on file in this office.
Attest: B. R. COWEN, *Clerk*,
By ROB'T C. GEORGI, *Deputy.*

Endorsed: 4054. U. S. circuit court. D. Armstrong, receiver of the Fidelity national bank, *vs.* Briggs Swift *et al.* Protest against compromise and settlement. Filed Apr. 15, 1890. B. R. Cowen. Porter & Rendigs and Wm. E. Brooks, att'y- for C. Brooks.

In the Circuit Court of the United States.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank,
vs.
BRIGGS SWIFT ET AL. } No. 4054.

Now comes Oscar I. Frank, a stockholder of said bank, who paid his assessment in full under written protest, being the owner of

twenty shares, five shares being bought on the 9th day of June, and five on the 13th day of June, 1887, paying therefor $—, the market price at that time, and that in view of his said claims aforesaid, protests against the settlement and compromise herein proposed, and enters his objection thereto.

SOUTHERN DISTRICT OF OHIO, *Western Division,* } *ss:*

A true copy of the original on file in this office.
Attest: B. R. COWEN, *Clerk,*
By ROB'T C. GEORGI, *Deputy.*

301 Endorsed: No. 4054. In the circuit court of the United States. David Armstrong, receiver of the Fidelity national bank, *vs.* Briggs Swift *et al.* Protest of O. S. Frank. Filed Apr. 15, 1890. B. R. Cowen.

In the Circuit Court of the United States.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank, *vs.* BRIGGS SWIFT ET AL. } No. 4054.

Now comes Richard Mallay, lately adjudged by this court to be a stockholder of the Fidelity national bank, and the holder of one hundred and seventy-five (175) shares thereof, of the face value of $17,500.00, and he having paid his assessment thereon in the sum of seventeen thousand five hundred ($17,500.00) dollars to the receiver of the Fidelity national bank, and also as a depositor of the said bank in the sum of $458.00, less 35 per cent. dividend on said amount of $458.00, and enters his protest against the settlement and compromise herein proposed, and enters his objection thereto.

SOUTHERN DISTRICT OF OHIO, *Western Division,* } *ss:*

A true copy of the original on file in this office.
B. R. COWEN, *Clerk,*
By ROB'T C. GEORGI, *Deputy.*

Endorsed: 4054. In the circuit court of the United States. David Armstrong, receiver of the Fidelity national bank, *vs.* Briggs Swift *et al.* Protest of Richard Mallay against acceptance of compromise. Filed Apr. 15, 1890. B. R. Cowen. F. J. Dorger, att'y for Richard Mallay.

302

E. L. Harper.

Date. 1886.		Registration Nos.	No. trans.	No. certif.	
Feb'y	24		...	1	1,000
	"		...	2	1,000
	"		...	3	1,000
	"		...	4	10,000
	"		...	5	10,000
	"		...	6	10,000
	"		...	7	10,000
	"		...	8	10,000
	"		...	9	1,000
	"		...	10	1,000
	"		...	12	45,000
	25		...	42	2,000
	30		259	289	8,600
	"		259	290	10,000
	31		268	292	400
April	2		289	295	6,100
	3		...	302	1,900
	20		...	319	400
	22		...	327	200
	7		37	310	2,000
	13		305	313	100
	14		221	315	16,000
	20		319	...	3,100
	"		315		
	"		315	...	8,000
	21		322	...	3,000
	22		325	...	700
	23		320	...	12,700
	26		113	...	2,000
	28		333	...	7,700
	"		147	...	5,000
	29		44	...	700
May	6		343	...	7,200
	14		356	...	6,700
	22		91	...	500
	"		91	...	500
June	16		99	...	1,000
	"		99	...	2,500
	22		137	...	10,000
	"		31		
	"		118		
	"		130		
	"		155		
	"		194		
	"		308		

Date. 1886.		Registration Nos.	No. trans.	No. of certif.	
April	2		294	289	8,600
	"		295		
	3		300	295	6,100
	"		301		
	"		301	302	1,900
	20		320	319	400
	"		321		
	"		318	315	16,000
	"		321		
	"		322	292	400
	"		323		
	"		321	42	2,000
	21		325	322	8,000
	"		324		
	"		316	325	3,000
	"		328		
	2		316	327	200
	23		329	328	700
	"		329	310	2,000
	28		342	333	12,700
	"		343		
May	3		347	346	700
	6		350	343	7,700
	"		356		
	14		358	356	7,200
	"		363		
	18		361	290	10,000
June	1		368	344	5,000
	"		369		
	"		369	367	500
	"		369	366	500
	"		369	336	2,000

E. L. Harper.

Date. 1886.		Registration Nos.	No. trans.	No. of certf.	
July	14		133	388	250 00
	"		351		
	"		7		
	16		8	391	12 00
	"		66		
	17		245	392	250 00
	"		4		
	"		6	393	100 00
	"		30		
	"		5	394	100 00
	"		41	395	50 00
	"		211		
	"		211	396	30 00
	19		272	397	100 00
	"		273		
	"		329	398	50 00
	"		88	400	20 00
	23		391	407	9 00
	"		407	410	4 00
	27		18	412	200 00
	"		1	413	20 00
	"		10		
	"		23	414	30 00
	"		9		
	"		377	415	25 00
	"		396	416	50 00
	"		400		

Date. 1886.		Registration Nos.	No. trans.	No. of certf.	
July	14		388	7	100 00
	"		388	8	100 00
	16		389	313	1 00
	17		392	4	100 00
	"		392	6	100 00
	"		394	5	100 00
	23		406	391	12 00
	"		407		
	"		408	407	9 00
	"		409		
	26		410	395	50 00
	"		411		
	27		413	1	10 00
	"		413	10	10 00
	"		414	2	10 00
	"		414	3	10 00
	"		414	9	10 00
	"		415	377	25 00
	"		416	396	30 00
	"		416	400	20 00
	"		417	415	25 00
Aug.	6		418	425	23 00
	"		427		
	9		426	410	4 00
	"		428		
	"		429		

303					
	"	415	417	10 00	
	"	415	418	15 00	
	29	119	419	50 00	
	"	124			
	31	405	420	25 00	
	"	68	421	40 00	
Aug.	3	234	422	25 00	
	5	179	423	100 00	
	"	364	424	100 00	
	6	372			
	" 373	370	425	23 00	
	" 129	371			
	"	389	426	50 00	
	" 341	304			
	"	380			
	" 425	425	427	5 00	
	"	103			
	9	401	428	50 00	
	"	287			
	"	410	429	3 00	
	"	410			
	21	161	432	35 00	
	"	177			
Sept.	1	57	433	20 00	
	"	57	434	10 00	
	"	57	435	1 00	
	3	15	436	100 00	
	"	15	437	100 00	
	"	15	438	100 00	
	"	16			
	"	16	439	100 00	
1886.					
Sept.	3	16	440	10,000	
	"	197	444	2,000	
	"	439	450	500	
	6	233	457	1,500	
	7	448	460	1,000	
	15	437	462	5,000	
	17	178	465	2,500	
	20	36			
	27	374	468	4,000	
Oct.	1	470	472	700	
	4	270	475	5,000	
	"	472	476	400	
	6	12	481	40,000	
	"	12	482	5,000	
	7	84	485	1,200	
	12	326	489	2,500	
	"	485			
	20	126	495	2,000	
	29	63	501	5,000	
	"	221			
	"	256	502	300	
	"	256			
Nov.	2	263	505	5,000	
	"	387			
	"	442			
	"	224			
	"	387	506	100	
	4	61	512	3,000	
	15	236	516	1,500	
	19	294	518	2,500	
Dec.	7	59	522	1,000	
	24	432	529	500	
	29	493	530	10,000	
	"	349			
	"	51	531	1,200	
	30	312	533	500	
1887.					
Jan'y	4	77	535	1,500	
	13	240	544	4,000	
	"	214			
	"	241	545	600	
	23	463	549	1,000	
Mar.	1	271	560	2,500	

1886.					
Sept.	3	446	440	100 00	
	6	447			
	"	448	439	100 00	
	"	449			
	9	450			
	"	452	438	100 00	
	"	453			
	"	453	435	1 00	
	"	453	433	20 00	
	"	453	429	3 00	
	"	453	427	5 00	
	15	456	436	100 00	
	"	457			
	"	459	444	20 00	
	16	461	451	15 00	
	17	463	437	100 00	
	"	462			
	23	466	450	5 00	
Oct.	4	473	460	10 00	
	"	476	472	7 00	
	"	474			
	6	478	468	40 00	
	"	479			
	"	481	12	450 00	
	"	482			
	7	483	465	25 00	
	12	489	485	12 00	
Nov.	2	507	501	50 00	
	"	508	475	50 00	
	"	509	462	50 00	
	11	514	489	25 00	
	19	517	506	1 00	
	"	517	476	4 00	
Dec.	7	521	516	15 00	
	"	521	502	3 00	
	11	525	518	25 00	
	24	528	432	35 00	
	"	529			
1887.					
Jan'y	8	537	321	31 00	
	10	539	422	25 00	
	"	540			
	"	541	418	15 00	
	"	541			
Feb'y	24	542	535	15 00	
	"	551			
	"	551	545	6 00	
	"	552	393	100 00	
	25	553	424	100 00	
	"	554			
Mar.	1	565	533	5 00	
	2	566	434	10 00	
	"	566	522	10 00	

304

1887.					
Mar.	16		237	579	300
	29		218	600	300
	31		284	615	1,000
	"		579		
April	1		47	620	3,000
	"		483		
	4		406	623	100
	"		190	625	700
	7		55	638	12,000
	"		355		
	"		355	639	13,000
	"		28		
	"		28	640	10,000
	"		167		
	"		172	641	5,000
	"		526		
	"		526	642	5,000
	"		54		
	13		386	645	2,000
	15		648	652	1,000
	19		87	656	1,000
	21		27	658	5,000
May	4		93	661	500
	"		660	663	1,500
	17		78	667	500
	18		593	670	500
	26		531	716	6,000
	"		625		
	"		382		
	"		629		
	"		225		
	"		620		
	28		474	726	200
1887.					
May	26		...	713	40,000
			...	714	40,000
			...	715	40,000
		See old stock	694	716	33,400

1887.					
Mar.	3		567	419	50 00
	"		568	423	100 00
	"		569		
	"		570	530	100 00
	"		571		
	"		572	549	10 00
	"		572	421	40 00
	"		573	428	50 00
	"		574	426	50 00
	7		576	529	5 00
	31		615	579	3 00
	"		617	600	3 00
Apr.	5		636	615	10 00
	6		637	505	50 00
May	4		662	661	5 00
	18		668	667	5 00
	26		716	620	30 00
	"		716	625	7 00
	"		716	531	12 00
	31		734	670	5 00
June	13		777	726	2 00

J. H. Mathews.

Date.		Registration Nos.	No. trans.	No. of certf.	
1886.					
Feb'y	24		...	13	25,000
	"		...	14	25,000
	"		...	15	25,000
	"		...	16	25,000
Sept.	4		440	446	10,000
	9		427	453	8,900
	"		438		
	"		435		
	15		433	456	8,000
	"		429		
	"		436	457	2,000
	"		436		
Dec.	4		188	519	10,000
	"		261		
	"		209		
	"		361	520	10,000
	7		283	521	10,000
	"		516		
	"		502		
	11		379	523	10,000
	"		59		
	"		13	524	10,000
	"		13		
	"		13	524	10,000
	"		125		
	"		108		
	"		518		
	24		332	528	10,000
	"		487		
	"		503		
	"		432		
1887.					
Jan'y	10		422	541	1,000
	"		418		
Mar.	19		14	580	20,000
	"		14	581	5,000

Sept.	3		436	15	250 00
	"		437		
	"		438		
	"		438	16	250 00
	"		439		
	"		440		
	15		459	457	20 00
Dec.	11		523	13	250 00
	"		524		
	"		525		
1887.					
Mar.	19		580	14	250 00
	"		581		
May	23		697	519	100 00
	"		695	580	200 00
	"		696		
	"		698	587	50 00
	28		724	520	100 00
	"		725		

305					
	23	.....	168	584	5,000
	"	.....	171		
	"	.....	153		
	"	.....	207	585	5,000
	"	.....	585		
	"	.....	473		
	"	.....	239	586	5,000
	"	.....	239	587	5,000
	"	.....	532	588	5,000
	"	.....	539		
	31	.....	48	613	8,000
April	4	.....	331	633	5,000
	6	.....	505	637	5,000
	19	.....	165	655	5,000
	"	.....	87		
May	23	.....	580	695	10,000
	"	.....	580	696	10,000
	"	.....	519	697	10,000
	"	.....	587	698	10,000
	"	.....	564		
	28	.....	520	724	5,000
	"	.....	520	725	5,000
	31	See new stock.....	212	731	2,500
May	31	See old stock.....	.....	731	2,500

A. P. Gahr.

Date.		Registration Nos.	No. trans.	No. of certf.	
1886.					
Feb'y	24	.....	.....	17	30,000
"		.....	.....	18	20,000
Ap'l	20	.....	292	323	3,400
"		.....	128		
"		.....	220		
"		.....	42		
1887.					
Jan'y	10	.....	418	542	1,000
Mar.	1	.....	458	561	5,000
"		.....	69	562	5,000
"		.....	69	563	5,000
"		.....	452	564	5,000
"		.....	139		
"		.....	139	565	5,000
"		.....	127		
"		.....	365		
"		.....	533		
	3	.....	419	567	5,000
"		.....	423	568	5,000
"		.....	423	569	5,000
"		.....	530	570	5,000
"		.....	530	571	5,000
"		.....	549	572	5,000
"		.....	421		
"		.....	428	573	5,000
"		.....	426	574	5,000
Apr.	4	.....	368	634	8,000
"		.....	369		
"		.....	551	635	5,000
	13	.....	121	644	8,000
"		.....	386		

Date.		Registration Nos.	No. trans.	No. of certf.	
1886.					
July	27	.....	412	18	20,000
Oct.	29	.....	497	323	3,400
1887.					
May	23	.....	698	564	5,000

306 The United States Circuit Court, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK OF NEW YORK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio.

UNITED STATES OF AMERICA,
Southern District of Ohio, } *ss:*

Pursuant to the foregoing commission, I hereby certify that on the eighteenth day of September, 1895; the nineteenth day of September, 1895; the eleventh day of November, 1895; the third day of February, 1896; and the fourth, fifth and sixth days of May, 1896,

before me, Effie V. Ryan, special examiner, appointed under an order of this court, dated the seventeenth day of September, 1895, at the office of David Armstrong, receiver of the Fidelity national bank, room No. 9, Masonic temple, Cincinnati, Ohio; at the office of Hon. William Worthington, in Wiggins block, Cincinnati, Ohio; in room 310 Government building; at the office of Hon. John W. Herron, in the United Bank building, Cincinnati, Ohio, and at the office of Henry Pogue, Esq., No. — West Fourth street, Cincinnati, Ohio, personally appeared Wm. B. McCauslen, M. M. White, Franklin Alter, Charles A. Hinch, Sol. P. Kineon, W. A. Goodman, W. S. Rowe, H. C. Yergason, Griffith P. Griffith, J. D. Hearne, Albert P. Gahr, as witnesses on behalf of the plaintiff; and J. Harry Watters, James H. Mathews, Henry Pogue and Sol. P. Kineon, on behalf of the defendant; and that Hon. William Worthington appeared as counsel for plaintiff; and that Hon. John W. Herron appeared as counsel for defendant; and that said witnesses, being by me first duly cautioned, sworn and affirmed, respectively, to tell the truth, the whole truth and nothing but the truth, deposed and said as appears by the depositions hereto annexed; and I further testify that the said depositions were by me reduced to writing.

I further testify that the said depositions have been retained by me for the purpose of sealing up and directing the same to the clerk of the court, as required by law, and that I am not of counsel or attorney to either of the parties herein; nor am I interested in the event of the cause.

In testimony whereof, I have hereunto set my hand, at the city of Cincinnati, county of Hamilton and State of Ohio, this seventh day of May, A. D. 1896.

EFFIE V. RYAN,
Special Examiner.

307 *Examiner's Fees.*

Reporting and transcribing depositions:

500 folios, at .20	$100 00
Attendance 9 days, at $3	27 00
Swearing 14 witnesses, at .10	1 40
Attaching 29 exhibits, at .10	2 90
Witness' fees, 14, at $1.50	21 00
	$152 30

And afterwards, to wit, on the 13th day of October, A. D. 1896, the following opinion was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Opinion of Judge Sage.

Circuit Court of the United States, Southern District of Ohio, W. D.

THE CHEMICAL NATIONAL BANK OF NEW YORK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati.

Upon complainant's appeal the decree of this court in its favor was affirmed as to the amount due as principal, but modified as to the interest. Before the decree of the appellate court was entered the case of Western National Bank *v.* Armstrong, 152 U. S., 346, was decided. Thereupon the defendant, in view of that decision petitioned for a rehearing on a ground of error assigned, but not pressed upon the attention of the court, nor referred to in its decision, to wit, that the court below erred in finding that the Fidelity bank was indebted to the complainant. The rehearing was granted, and resulted in a reversal of the decree below "with leave to parties to adduce further evidence, upon the issue whether the Fidelity bank owes anything to the Chemical bank by virtue of the alleged loan." The loan which was of $300,000, was made by complainant March 2, 1887, upon an application in writing over the signature "E. L. Harper, vice-president," on a letter-head sheet of the Fidelity bank, and dated and mailed at Cincinnati February 28, 1887, as follows: "Enclosed herewith we hand you for cr., our certificate of deposit No. 345, with bills collateral as follows:" (Here was inserted list of collaterals aggregating $326,695.30.) "We desire to keep
308 a large reserve with you, and we trust you will make the rate as low as you proposed some time since."

On the second of March the cashier of the Chemical bank wrote and mailed letter acknowledging receipt of the above and adding "we credit Fidelity national bank $300,000 and shall be considerate as to rate when the loan is paid." The transaction was entered in the call-loan book of the Chemical bank as—

"Loan No. 1070, March 2, 1887. Fidelity national bank $300,000. Receivables $326,695.30."

The directors of the Fidelity bank did not authorize or consent to, or until after the failure of the bank, know of this loan. It was not entered on the books. The book-keeper and general accountant first knew of it after the failure of the Fidelity bank. On the second of March, the date when the loan was made, Harper gave to the general book-keeper a charge ticket and directed him to place it to his credit, which was done. That ticket read as follows: "Credit check, transfer of funds, E. L. H. $300,000. Charge Chemical N. Y." At the same time the charge of $300,000 was made against the Chemical bank. The entire transaction was fraudulent and criminal on the part of Harper, who was then engaged in wrecking the bank for his own speculative purposes.

By the evidence adduced upon the rehearing it is established that

prior to the decision of the Western National Bank *v.* Armstrong it was customary and usual for one national bank to borrow money from another, and that it was regarded by bankers as legitimate and in the line of banking business to do so, without any special authority from the board of directors by resolution or otherwise, nor was such authority ever required by the bank making the loan. The president, vice-president and cashier severally were treated as having authority to make loans on behalf of the bank; in other words, such transactions were recognized as being within the scope of their general duties. Transactions taking the form of the loan involved in this case, some covering large amounts, but none so large as this, are referred to by officers of banks, in their testimony as not infrequent. The cashier of the Chemical bank in his deposition in this cause, given March 12, 1891, years before the decree of Western National Bank *v.* Armstrong, testified that it was customary for one bank to borrow money from another bank in that way, and that such transactions were very common. His language was: "It is a customary way for banks in the West and South to borrow in that manner for several reasons: First, it increased their deposit line, and in the second place they do not have to show a rediscount
309 on a loan, and hence it is a very common thing for loans to be made of that character—a certificate of deposit with a mass of collaterals attached." The president of the Chemical bank having had forty years' experience, testifies that prior to the decision of Western national bank it was a usual thing for one bank to borrow money from another bank, that loans were effected by rediscount of bills receivable, or by the bank's note, secured by collateral, or by a certificate of deposit, that the president, vice-president or cashier acted for the borrowing bank, that no special authority from the directors was ever required and that the decisions of the courts in that State were specific on that point; also that it made no difference as to the amount of the loan. To the same effect is the testimony of the president of the American Exchange Bank of New York, speaking from thirty-three or thirty-four years' experience; also the testimony of the president of the Third national bank, an ex-Comptroller of the Currency at Washington, ex-superintendent of the bank department of the State of New York, and an ex-bank examiner; the cashier of the Importers' and Traders' bank, the president of the First national bank and the president of the Gallatin national bank, all of the city of New York. All this testimony is uncontroverted, and it is quite significant that although Receiver Armstrong was himself an old and experienced banker, it was not until after the decision of Western National Bank *v.* Armstrong that the point was made that the negotiation of the loan upon which this suit is based was outside the ordinary course of business in banking and not within the authority of the line of the duties of the vice-president of the Fidelity bank.

In Western National Bank *v.* Armstrong the answer denied that the complainant had loaned the sum claimed or any other sum to the Fidelity bank, averred that the notes mentioned in the bill made by Gahr and endorsed by Harper were discounted by the complain-

ant for Harper, by whom the proceeds of the discount were received; that the discounted notes were at no time the property of the Fidelity national bank, and that that bank never had any interest in the transaction, and was in no way responsible therefor. Upon the hearing the bill was dismissed by the court below and the dismissal was affirmed by the Supreme Court. The opinion begins with the statement that "whether the transaction of May, 1887, was a discount by the Western National Bank of New York, in favor of E. L. Harper of the four notes made by A. P. Gahr and endorsed by Harper, or was a loan by said bank to the Fidelity national bank,
310 is the question principally discussed in the briefs and oral arguments of the respective parties." Justice Shiras, speaking for the court proceeded: "The theory that the case was that of a simple discount by the New York bank of four promissory notes, made by Gahr and endorsed by Harper, and secured by the assignment by Harper of certificates of 1,600 shares of the stock of the Fidelity national bank, comports with the form of the notes themselves. Such a transaction would have been an ordinary one, and in the course of the usual business of such bank. The letter of May 16, 1887, in which the proposition was made to the New York bank to make the loan was signed by E. L. Harper in his own name, without any official designation." The letter of application for the loan was written on the letter-head paper of the Fidelity bank and the proceeds of the discount were placed to its credit and drawn out by its drafts. It appeared that it was understood by the New York bank that the application came from the Fidelity bank. But it further appeared that the drafts against the proceeds although in the name of the bank were drawn, some by Harper, others by his direction and appropriated by him to his own use, or at least it did not appear "that the bank ever got a penny of the borrowed money or any benefit or advantage whatever by reason of the transaction." The court said that "it could not be pretended that Harper as principal executive officer of the bank had power without authority from the board to bind the bank by borrowing $200,000 at four months' time." The court continued: "It might even be questioned whether such a transaction would be within the power of the board of directors. The powers expressly granted are stated in the eighth section of the national bank act (Rev. Stat., sec. 5136, par. 7): A national bank can "exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security and by obtaining, issuing and circulating notes."

"The power to borrow money or to give notes is not expressly given by the act. The business of the bank is to lend, not to borrow, money; to discount the notes of others, not to get its own notes discounted. Still, as was said by this court in the case of First Nat. Bank v. Nat. Exchange Bank, 92 U. S., 122, 127, 'authority is thus

given in the act to transact such a banking business as is
311 specified, and all incidental powers necessary to carry it on
are granted. These powers are such as are required to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs, within the general scope of its charter, safely and prudently. This necessarily implies the right of the bank to incur liabilities in the regular course of its business, as well as to become the creditor of others.'"

"Nor do we doubt that a bank, in certain circumstances, may become a temporary borrower of money. Yet such transactions would be so much out of the course of ordinary and legitimate banking as to require those making the loan to see to it that the officer or agent acting for the bank had special authority to borrow money."

"Even, therefore, if it be conceded that it was within the power of the board of directors of the Fidelity national bank to borrow $200,000 on time, it is yet obvious that the vice-president, however general his powers, could not exercise such a power unless specially authorized so to do, and it is equally obvious that persons dealing with the bank are presumed to know the extent of the general powers of the officers."

There was not only no evidence that Harper had the authority claimed for him, but also there was no evidence that negotiation of a loan or the borrowing of money was part of or incident to the transaction of banking business between Cincinnati, a commercial center, and New York, the commercial metropolis of the United States. The decision in Western National Bank *vs.* Armstrong, is to be recognized as the authoritative statement of the law—and certainly this court has no disposition to otherwise regard it—but it is to be taken with reference to the facts as they there appeared. It is a decision to be carefully limited, and not to be stretched or enlarged by construction or in application. It is true, upon the facts of that case, that the business of the bank was "to lend, not to borrow, money; to discount the notes of others, not to get its own notes discounted," and it is true in a certain general sense. But that the Supreme Court did not intend, by the use of that language, to lay down a rigid, inflexible rule, applicable to all cases and under all circumstances, is apparent from the reference to, and the quotation from, First National Bank *vs.* National Exchange Bank, 92 U. S., 127, which follows in immediate juxtaposition in the opinion as already cited and copied herein. This view is made more clear by the fact that immediately after this quotation the opinion pro-
ceeds: "Nor do we doubt that a bank, in certain circum-
312 stances, may become a temporary borrower of money," adding that by reason of the extraordinary character of such transactions it would be the duty of the lender to see to it that the officer or agent acting for the borrowing bank had special authority. The court then says:

"Even, therefore, if it be conceded that it was within the power of the board of directors of the Fidelity national bank to borrow $200,000 on time, it is yet obvious that the vice-president, however

general his powers, could not exercise such a power unless specially authorized so to do, and it is equally obvious that persons dealing with the bank are presumed to know the extent of the general powers of the officers."

"If it be conceded," or the corresponding phrase "however that may be," in a judicial opinion, may generally (not always) be taken as indicating that what he said upon the point referred to is not to be taken as the expression of an absolute, final conclusion; or as signifying that there is at least a tinge of obiter in what is thus qualified.

All these considerations, together with the circumstances that the entire discussion of the right of a national bank to borrow money, is introduced in the opinion after the finding that the transaction involved was upon its face and upon the facts an individual transaction, to which the Fidelity bank was not a party, and for which it was not liable; that finding being decisive and rendering the discussion of the power of a national bank to borrow money unnecessary, which is always to be taken into account in determining the weight of an authority, lead this court to the conclusion that the Supreme Court in Western National Bank *vs.* Armstrong was dealing with and deciding the case before it upon its facts and circumstances, without intending to lay down a rule or establish a precedent applicable to all cases, or even generally. The question of the authority requisite to enable its officers to conduct such transactions will be considered later. What is the proper business of a bank, and what incidental powers may be necessary to carry on the business of banking is not purely a question of law, nor altogether a question of fact. It is a mixed question of law and fact, depending, as to fact, upon circumstances and location. For illustration, a witness in this case, vice-president of one of the largest banks in Cincinnati, testified that while, since the decree in Western National Bank *vs.* Armstrong, he had made it a rule to consult his board of directors, "he would consider it his duty, if there was a run on his bank, and he had good bills receivable, to discount those bills, and if he couldn't see his directors it wouldn't take
313 him long to rediscount them without consulting them." No one will question that he would be justified in so doing, and that the bank would be bound; and no one would hesitate to say that if he should decline to do so because he could not get his directors together, and therefore should suffer his bank to fail, he would be grossly derelict. Then, again, the locality of the bank, the nature of its business, and the time of the transaction, may have much to do with determining what incidental powers are necessary to carrying on the business of banking. It is in testimony in this case that country banks in agricultural districts often borrow, sometimes heavily, at certain seasons of the year, from Cincinnati banks, to provide for the movement of crops. At other seasons, borrowing money might be entirely foreign to the legitimate business of banking, and, in other localities, it might be so regarded at any season, unless upon some extraordinary emergency. A cashier engaged in banking business for more than twenty years, testified to frequent

loans by city banks to country banks. In "fifty to sixty hundredths of the cases" the transactions took the shape of rediscounting paper; in many cases the loans were on county and municipal bonds. He referred to instances—one of a loan on bonds and securities of $150,000 and to rediscounts from $100,000 to $150,000, and added that nine-tenths of the loans were made by the officers without consulting the board, and that if the officers were satisfied with the security the amount of the loan made no difference—that is within the one-tenth limit, which they never exceed. Now, the city banks sustain to the banks of other cities, and especially to those of the city of New York, a relation in many respects similar to that of the country banks to the city banks. The difference is, that between cities, and especially between the interior cities and New York, the transactions are heavier, the exchanges are often of larger amounts, and they may occur at any season of the year. The witness last above referred to testified that St. Louis, the day before he gave his deposition, transferred $50,000 to New York, to the credit of his bank. It may be said that it would be an easy thing for the directors to confer upon *its* officers, by express terms, the requisite authority. But the question is not how much the authority shall be conferred or by whom exercised, but whether such transactions belong to the business of banking. By the evidence this case is clearly distinguishable from the Western National Bank *vs.* Armstrong, and such transactions are, as matter of fact, proven
314 to be included in the business of banking. They are also included as matter of law, because, by section 5136, Revised Statutes, power is granted to every national bank to "exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, bullion; by loaning money on personal security; and by obtaining, issuing and circulating notes." When the Supreme Court, in commenting upon this section, said that "the power to borrow money or to give notes is not expressly given by the act," and added, "the business of the bank is to lend, not to borrow, money; to discount the notes of others, not to get its own notes discounted," it was setting forth in crystallized form, what it deemed to be the substance of the provisions of the section, rather than stating a conclusion or formulating a rule. Accordingly, in the very next sentence, it cites with approval First National Bank *vs.* National Exchange Bank, quoting the passage which indicates that sec. 5136 is not to be so strictly construed as to limit the incidental powers to precisely the things specified in the section, for after stating that these powers are such as are required to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs within the general scope of its charter, safely and prudently, it adds, "This necessarily implies the right of a bank to incur liabilities in the regular course of its business, as well as to become the creditor of others." As is suggested by counsel for complainant, the enumera-

tion of powers in section 5136, though clear, is not put in a strictly logical order. Without changing its meaning, it might be paraphrased so as to read: "To carry on the business of banking by discounting notes, drafts, bills of exchange and other evidences of debt, by receiving deposits, by buying and selling exchange, coin and bullion, by loaning money on personal security, and by obtaining, issuing and circulating notes according to the provisions of this act, and to exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on such business of banking."

This case is also distinguishable from Western National Bank *v.* Armstrong in that there the court find that the transaction was in form as well as in fact an individual one and that finding alone was decisive of the case. The court below had entered its decree
315 upon that ground for it did not touch upon the question of authority or power, which was not even suggested. Here the transaction was in form in behalf of the Fidelity bank. Neither the power nor the authority of Harper was questioned in the court below, nor was the liability of the bank. The litigation was exclusively concerning the amount due and the interest. So it was in the court of appeals until after the opinion in Western National Bank *v.* Armstrong was filed in the Supreme Court. Again there the loan was for four months, here it was on call, a very important difference. Upon the evidence the finding of this court is that the power of the Fidelity to borrow money by conducting such a transaction as is involved in this case, is established and that the same is legitimately within the business of banking, under the national bank act.

The remaining question is whether Harper had authority to conduct the transaction. He was vice-president and acting president, the chief executive officer of the bank. His position made him a vice-principal—a representative of the bank, not merely its servant or employee. From the nature and necessities of the business of banking and the constantly occurring instances or emergencies when success or failure in the conduct of the particular transaction depends upon the executive ability, the judgment, and the decision of the officer representing the bank, in reference to points which could not have been anticipated and which must be promptly and without hesitation settled, it is evident that a large discretion must be vested in such officers. To require special authority for their acts would so embarrass the conduct of the business as to seriously interfere with, if not entirely prevent the prosperous conduct of its affairs. Hence such officers stand among the highest in the rank of general agents. Their position warrants the implication of the authority necessary to the performance of their duties, and when proof is made that transactions of the nature of that now under consideration have, for more than twenty years, in and about the city of Cincinnati and the city of New York *had* been conducted by them not only without special authority in each instance, but without any direct authority from their board of directors—in very many instances, indeed generally, without even consulting them—and with-

out any authority whatever except that to be inferred from long established custom and usage—which is as good in the case of a corporation as in the case of an individual—it hardly can be maintained that more must be shown. The conclusion of this court is that the authority of Harper in this case is sufficiently established.

316 The point was made in the brief that the amount of the loan, $300,000, was sufficient to excite suspicion and put the complainant upon inquiry. That might be argued with much force, if there was in the then known condition of the Fidelity bank anything to indicate that its funds were being abstracted by its vice-president for his own speculative purposes, or that there was any irregularity in the conduct of its business. On the contrary the unlawful and criminal operations of Harper were not publicly known or known to the president or board of directors of his own bank until they were brought to light by the failure in June, more than three months after the loan by the Chemical. At the date of that loan the affairs of the Fidelity bank *was* apparently prosperous. It appears in evidence that single loans of from $100,000 to $150,000 had been made by Cincinnati banks to country banks and that such transactions were recognized in the ordinary course of banking business, and that it was the custom of New York banks to make heavy loans to western and southern banks. Why then should the Chemical, having no possible motive to enter upon an irregular transaction, ar d expecting only a low rate of interest, acting upon an application regular upon its face, with bills receivable as collateral, everything being in the usual form, not knowing and not having the means of knowing anything whatever to excite suspicion, there being nothing which the most careful inquiry would have disclosed, have hesitated to make the loan. In this connection the statement of the law with reference to the vigilance required of bank directors by Lord Moncreiff in his charge to the jury upon the trial of the directors of the City of Glasgow bank, is in point: 'A director is generally a man who has other avocations to attend to. He is not a professional banker. He is not expected to do the duty of a professional banker, as we all know. He is a man selected from his position, from his character, from the influence he may bring to bear upon the welfare of the bank, and from the trust and confidence which are reposed in his integrity and in his general ability. But I need not say that it is no part of his duty to take charge of the accounts of the bank. He is entitled to trust the officials of the bank who are there for that purpose, and as long as he has no reason to suspect the integrity of the officials, it can be no matter of imputation to him that he trusts to the statements of the officials of the bank acting within the proper duties of the department which had been entrusted to them." Verbatim report of the trial, page 433.

317 If such be the rule as to directors, I see no reason why, under the facts in this case, the extraordinary caution insisted upon by counsel should have been exercised by the Chemical. As long as Harper was accredited to the officers of the Chemical

bank as the chief acting executive officer of the Fidelity bank, and there was nothing in the known state of its affairs, or of its relations to that bank to excite suspicion, the officers of the Chemical had the right to trust in his integrity, and to conduct their transactions with him accordingly. I have already stated why, in my opinion, the rule in Western National Bank *v.* Armstrong does not apply.

Counsel for complainant cite the New York banking act of 1838, containing almost the exact words of the seventh clause of section 5136, and the case of Curtis *v.* Leavitt, 15 N. Y., 9–52, *et seq.*, quoting from Judge Comstock that banking "regarded as a business and not as a franchise, includes the borrowing of money as one of its features and incidents," and after citing Bank of Australia *v.* Breillat, 6 Moore's P. C., 152–194, proceeds to a discussion of the right of a bank to borrow money.

After referring to the fact that in the New York act the power to borrow money is not found in the section containing the specifications relating to the business he adds: "If the statute had omitted the general term 'business of banking' and had merely enumerated the power of issue and all the others named in the 18th section, that would have been a general grant of banking powers, including as their incident the right to borrow money when a necessity may arise in the exercise of those powers" as incident to the business of banking. Counsel also cite 19th New York, 156, affirming Curtis *v.* Leavitt and holding that "the cashier in virtue of his general employment could exercise the power was not denied upon the argument, and the proposition does not admit of a reasonable doubt." They also refer to Morse on Banks and Banking, section 63, and authorities quoted; also to Bank of Augusta *v.* Earl, 13th Peters 519, and Tombigbee R. R. *v.* Kneeland, 4th Howard, 16. The case of Curtis *v.* Leavitt, decided in 1857, is valuable as evidencing that the borrowing of money by one bank from another bank was, years before the enactment of the national bank act, recognized by the court of last report of the State of New York, the place of the transaction here involved, as included, both as a matter of fact, and in law, in the business of banking. But the general question of law is not open for consideration in this court. Western National Bank *v.* Armstrong is authoritative so far as it applies, and would control if this case were not distinguishable upon the facts, as has already been pointed out.

318 The decree will be for the complainant for the amount and with interest as directed by the mandate.

GEO. R. SAGE,
U. S. District Judge.

Oct. 13, 1896.

And afterwards, to wit, on the 21st day of October, A. D. 1896, an entry was made upon the journal of said court; said entry is clothed in the words and figures following, to wit:

Entry.

Journal 3, page 361.

This cause came on to be heard upon the mandate from the United States court of appeals for the sixth circuit, filed April 22nd, 1895, and the pleadings, and the evidence taken since the filing of said mandate, as well as that heretofore received, and the admission of the respondent in open court that upon the 15th day of August, 1894, a further dividend had been declared from the assets of the Fidelity national bank to the creditors of said bank of eight (8) per centum, and was argued by counsel and taken under consideration by the court. And the court being now fully advised, finds that the Fidelity national bank, upon the second day of March, 1887, borrowed from the complainant the sum of three hundred thousand ($300,000.00) dollars, and that on the 21st day of June, 1887, when the Fidelity national bank was declared insolvent, there was due from the Fidelity national bank to the complainant the said sum of three hundred and five thousand four hundred and fifty dollars ($305,450.00); that dividends have been declared from the assets of the Fidelity national bank to the creditors thereof at the dates, and for the rates per centum, as follows; that is to say:

On October 31st, 1887, the first dividend, of twenty-five (25) per centum.

On June 15th, 1889, the second dividend, of ten (10) per centum.

On June 30th, 1890, the third dividend, of ten (10) per centum.

On August 5th, 1891, the fourth dividend, of five (5) per centum.

On August 15th, 1894, the fifth dividend, of eight (8) per centum.

The court further finds that upon the 25th day of April, 1890, the defendant rejected the claim aforesaid of the complainant, which had been theretofore presented to him; and that after the previous decree of this court upon, to wit, the 25th day of July, 1892, said defendant paid to said complainant the sum of one hundred thousand ($100,000.00) dollars upon account of the sum which
319 might be due to the complainant pursuant to the provisions for that purpose made in the decree of this court, entered in this cause on the 8th day of July, 1892.

The court finds that there is now due this 21st day of October, 1896, to the complainant from the defendant the sum of one hundred and seventeen thousand seven hundred and forty-nine dollars and seventy-eight cents ($117,749.78), being the dividends aggregating fifty-eight (58) per centum heretofore declared from the assets of the Fidelity national bank, computed upon the amount of the complainant's claim as herein allowed, with interest on those of said dividends which were declared prior to April 25th, 1890, from said last-named day, and with interest upon those thereafter declared from the dates of their declaration, respectively, after crediting the said payment of one hundred thousand ($100,000.00) dollars, upon the 25th day of July, 1892, the computation being made upon the principle ordinarily applied in partial payments.

It is therefore ordered, adjudged and decreed that the defendant pay to the complainant, or to Wm. Worthington, its solicitor, the said sum of one hundred and seventeen thousand, seven hundred and forty-nine dollars and seventy-eight cents ($117,749.78), with interest thereon from said 21st day of October, 1896, and that hereafter, while any balance remains due the complainant upon said loan, said defendant pay to complainant dividends, calculated upon said sum of three hundred and five thousand — and fifty ($305,450.000) dollars, like to those paid to other creditors of the Fidelity national bank.

And it is further ordered that the defendant pay the costs of this cause to be taxed by the clerk.

And the said defendant, feeling aggrieved by the foregoing order and decree — to the United States circuit court of appeals for the sixth circuit, and presents his assignment of errors, which are filed, and prays that his appeal may be allowed, and that a transcript of the record and proceedings, and papers from which said order and decree was made, duly authenticated, may be sent to said United States circuit court of appeals for the sixth circuit; and thereupon, it is ordered that said appeal be allowed as prayed for, and that appellant give bond therefor in the sum of one thousand dollars.

And afterwards, to wit, on the 22nd day of October, A. D. 1896, the following petition for appeal and assignment of errors
320 were filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Petition for Appeal and Assignment of Errors.

United States Circuit Court, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK
vs.
DAVID ARMSTRONG, Receiver. } No. 4339.

Petition on appeal.

And now comes the said defendant, and appeals from the order and decree entered herein in this cause, to the United States circuit court of appeals for the sixth circuit, and presents his assignment of errors, which are herewith filed, and prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers from which said order and decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the sixth circuit, and that the bond given by him herein may be approved by this court, and his said appeal fully perfected.

JOHN W. HERRON,
Solicitor for Defendant.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank. } No. 4339.

Assignment of Errors.

Now comes the said defendant and presents this his assignment of errors to the final decree of the court herein, to wit:

1st. Said court erred in finding that there was due to the said complainant from the Fidelity national bank, on the 21st of June, 1887, the sum of three hundred and five thousand, four hundred and fifty dollars ($305,450), or any other sum.

321 2nd. The court erred in finding that the complainant, on the 2nd of March, 1887, loaned to the said Fidelity national bank the sum of three hundred thousand — ($300,000), or any other sum.

3rd. The court erred in finding that the complainant was entitled to the same dividends upon the sum of three hundred and five thousand four hundred and fifty dollars ($305,450), as was declared to the creditors of the said Fidelity national bank.

4th. The court erred in finding that the several sums which had been paid to the complainant prior to the declaration of dividends by the defendant from collaterals sent to it as stated in the pleadings should not be deducted from the amount of such alleged loan in determining the sum upon which dividends to complainants should be paid.

5th. That the court erred in finding that the sum of twenty-five thousand dollars ($25,000), which the complainant failed to collect from John B. Lewis, as stated in the answer of defendant, should not be deducted from said alleged claim in determining the sum upon which dividends to complainant should be paid.

6th. That the court erred in finding that the complainant is entitled to dividends upon the sum of three hundred and five thousand four hundred and fifty dollars ($305,450).

7th. Said court erred in finding that the complainant is entitled to interest on the several dividends declared by the defendant in favor of the creditors of the Fidelity national bank, from the date of the presentation of the alleged claim to the defendant, as to dividends declared prior to that date, and from the date of the declaration of dividends as to those declared after that date.

8th. That the court erred in refusing to compel the complainant to exhaust the collaterals held by it as security for said alleged loan, before ordering dividends upon the same to be paid to it, and in ordering dividends to be paid to complainant upon said alleged claim without reference to the collaterals still held by it.

9th. That the court erred in refusing to find that the said alleged

loan of three hundred thousand dollars, claimed to have been made on the 2nd of March, 1887, was without authority of the board of directors of the Fidelity national bank, and for which the said bank was not liable.

JOHN W. HERRON,
Solicitor for Defendant.

322 And afterwards, to wit, on the 26th day of October, A. D. 1896, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal 3, page 369.

The defendant, David Armstrong, receiver, having heretofore filed *its* petition in appeal and assignment of errors, the court doth now upon the application of his attorneys allow the appeal herein, and doth fix the appeal bond in the sum of $1,000.

And afterwards, to wit, on the 29th day of October, A. D. 1896, the following appeal bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CHEMICAL NATIONAL BANK OF NEW YORK
vs.
DAVID ARMSTRONG, Receiver of the Fidelity National Bank.

Know all men by these presents, that we, David Armstrong, receiver of the Fidelity National Bank of Cincinnati, Ohio, as principal and W. S. Rowe, as surety are held and firmly bound unto the Chemical National Bank of New York in the sum of one thousand dollars, to be paid to the said Chemical national bank, etc., successors in office or assigns. To which payment, well and truly — be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated this 29th day of October, 1896.

Whereas, the above-named David Armstrong, receiver as aforesaid, have taken out an appeal to the circuit court of appeals of the United States, sixth circuit to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named David Armstrong, receiver as aforesaid, shall prose-

cute his said appeal to effect and answer all costs, if he
323 shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force and virtue.

DAVID ARMSTRONG, [SEAL.]
Receiver the Fidelity National Bank,
By JOHN W. HERRON, *His Att'y.* [SEAL.]
W. S. ROWE. [SEAL.]

Sealed and delivered in presence of—
ROB'T C. GEORGI.

The above security is approved.
GEORGE R. SAGE,
District Judge of the United States, S. D. Ohio.

And afterwards, to wit: on the eighteenth day of November, A. D. 1896, the following alias mandate was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Alias Mandate.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

United States Circuit Court of Appeals for the Sixth Circuit.

The President of the United States to the honorable the judge of the circuit court of the United States for the southern district of Ohio, Greeting:

Whereas, lately in the circuit court of the United States for the southern district of Ohio, before you, or some of you, in a cause between The Chemical National Bank, complainant, and David Armstrong, receiver of the Fidelity National Bank of Cincinnati, respondent, where a decree was entered in said cause on the 8th day of July, A. D. 1892, as by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the sixth circuit by virtue of an appeal and cross-appeal agreeably to the act of Congress in such cases made and provided, fully and at large appear.

And whereas, in the term of October in the year of our Lord one thousand eight hundred and ninety-four, the said cause came on to be heard before the said United States circuit court of appeals for the sixth circuit, on the said transcript of record, and was argued by counsel.

On consideration whereof, the court made the following
324 order, namely: The previous order of the court is modified so as to make the order read as follows: That the decree of the circuit court is reversed with leave to parties to adduce further evidence upon the issue whether the Fidelity bank owes anything to the Chemical bank by virtue of the alleged loan.

That if the issue be decided in favor of the receiver the bill shall

be dismissed and a decree entered in favor of the receiver for the restitution of the $100,000.00 paid by the receiver July 25, 1892, to the Chemical national bank on the faith of the decree to allow the claim of $305,450.00 (being the amount of the loan and interest until the date of the insolvency, June 21, 1887), and to pay the dividends accruing on such claims with interest on those declared before April 25, 1890, from that date, and on those thereafter declared from the date, *and on those thereafter declared from the date* of declaration until the dividends and interest are paid, and to take credit on the payment of such dividends and interest for the $100,000.00 by him paid July 25, 1892, on the principle ordinarily applied in partial payments. It is further ordered that the costs in this court be divided equally between appellant and appellee, and that the costs in the court below follow the decree of that court. Feb. 5, 1892.

You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighteenth day of November, in the year of our Lord one thousand eight hundred and ninety-six.

Costs of this Court to be Divided Equally.

Clerk	$36 30
Printing record	291 91
Attorney	20 00
	$348 21

FRANK O. LOVELAND, [SEAL.]
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

United States circuit court of appeals for the sixth circuit. No. 56. October term, 1894. Chemical National Bank of New York *vs.* David Armstrong, receiver of Fidelity Nat. Bk. of Cincinnati, Ohio. Alias mandate. Filed Nov. 18, 1896. B. R. Cowen, clerk.

325 UNITED STATES OF AMERICA, } *ss:*
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within and for the division and district aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings by and before said court, in the above-entitled cause as the same appears of record, and on file in the clerk's office of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this eighteenth day of November, A. D. 1896.

[SEAL.]

B. R. COWEN, *Clerk,*
By ROB'T C. GEORGI,
Deputy Clerk.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

United States Circuit Court of Appeals for the Sixth Circuit.

To the Chemical National Bank of New York, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the 28th* day of November next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, wherein David Armstrong, as receiver of the Fidelity National Bank of Cincinnati, Ohio, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twenty-first.

GEO. R. SAGE,
Judge of the U. S. District Court within and for the Southern District of Ohio, Sitting and Holding Circuit Court, at the Trial of said Cause.

326 STATE OF OHIO, } ss:
County of Hamilton, Southern District of Ohio, }

On this 10th day of November, A. D. 1896, personally appeared before me, John W. Devanney, and made oath that he delivered a copy of within citation to William Worthington, agent of the Chemical National Bank of New York, who accepted service of same.

JOHN W. DEVANNEY.

Sworn to and subscribed before me this 11th day of November, 1896.

[SEAL.] ROB'T C. GEORGI,
Deputy Clerk, U. S. Circuit Court, S. D. O.

Fees.

Copy	$0 50
1 service	2 00
1 M. writ	06
Return	30
	$2 86

* Not exceeding 30 days from the day of signing.

No. 4339. United States circuit court, southern district of Ohio, western division. The Chemical Nat'l Bank of N. Y. *vs.* David Armstrong, as receiver of the Fidelity nat'l bank. Citation. Marshal's civil docket No. 92. Filed Nov. 11, 1896. B. R. Cowen, clerk.

327 And afterwards, to wit, on November 25, 1896, an appearance was filed in said court in said cause, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1895.

DAVID ARMSTRONG, Receiver Fidelity National Bank,
v.
CHEMICAL NATIONAL BANK OF NEW YORK. } No. 473.

To the clerk of said court:

Please enter my appearance as counsel for the appellant.

JOHN W. HERRON.

And afterwards, to wit, on May 10, 1897, an entry was made upon the journal of said court in said cause, which is in the words and figures as follows:

DAVID ARMSTRONG, Receiver Fidelity National Bank,
v.
CHEMICAL NATIONAL BANK OF New York. } Appeal from the Circuit Court of the United States for the Southern District of Ohio. Before Judges Taft, Lurton, and Severens.

This cause came on to be heard this day and was argued by Mr. John W. Herron for the appellant and by Mr. George H. Yeaman and Mr. Wm. Worthington for the appellee, and the hearing is continued until tomorrow.

328 And afterwards, to wit, on May 11, 1897, an entry was made upon the journal of said court in said cause, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

DAVID ARMSTRONG, Receiver Fidelity National Bank,
v.
CHEMICAL NATIONAL BANK OF New York. } Appeal from the Circuit Court of the United States for the Southern District of Ohio. Before Judges Taft, Lurton, and Severens.

This cause came on to be further heard this day and was argued by Mr. Wm. Worthington for the appellee and by Mr. John W. Herron for the appellant, and submitted to the court for decree.

And afterwards, to wit, on December 7, 1897, a decree was entered in said court in said cause; which decree is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

DAVID ARMSTRONG, Receiver Fidelity National Bank, v. CHEMICAL NATIONAL BANK OF New York.	Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Ohio, and was argued by counsel.

329 On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit, on December 10, 1897, and opinion was rendered in said cause, which is in the words and figures as follows:

Opinion.

330 United States Circuit Court of Appeals, Sixth Circuit.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank, vs. THE CHEMICAL NATIONAL BANK.	No. 473. Appeal from the Circuit Court of the United States for the Southern District of Ohio, Western Division.

Submitted May 11, 1897. Decided Dec. 7, 1897.

Before Taft and Lurton, circuit judges, and Severens, district judge.

The bill in the circuit court was exhibited by the Chemical National Bank of New York City against David Armstrong, receiver of the Fidelity national bank, to compel the allowance of a claim of $300,000, with interest, for a loan alleged to have been made by the Chemical bank to the Fidelity bank on March 2, 1887. In his amended answer, the receiver denied that the Fidelity bank had incurred the obligation, as alleged, or had received the proceeds thereof, but averred that its vice-president, E. L. Harper, and its cashier, Ammi Baldwin, in pretending to bind the Fidelity bank thereto, had acted fraudulently and without authority of its directors, and in furtherance of a fraudulent scheme, by which the proceeds of the alleged loan were all appropriated to the use of Harper, and that all this was without the knowledge of the bank or its directors. It was conceded that a large amount of collateral had been deposited to secure payment of the loan. At the original hearings in the circuit court, and in this court, the question of Harper and Baldwin's authority to bind the Fidelity bank was but little discussed, although made both upon the pleadings and in the assignments of error.

331 It was disposed of in a single sentence against the contention of the receiver in the first opinion in this court. The main question there considered was whether the Chemical bank was obliged to reduce its claim by the proceeds of collateral held to se-

cure the debt, and collected after the declared insolvency and before the filing of proof. This court, reversing the circuit court, held that no such deduction need be made, but that the claim must be allowed in full for the principal and interest due and unpaid at the date of the declared insolvency. 16 U. S. Ap., 465. A motion for rehearing was made by the Chemical national bank on a subordinate question as to the interest to be allowed on delayed dividends. Pending the motion, the Supreme Court of the United States announced its opinion in the case of the *Western National Bank v. Armstrong, Receiver*, 152 U. S., 346, in which it was held that "the borrowing of money by a national bank, though not illegal, was so much out of the course of ordinary and legitimate banking business as to require those making the loan to see to it that the officer or agent acting for the bank has special authority to borrow money," and that where no special authority appeared, and no ratification of the unauthorized act was shown, the bank was not liable. Thereupon, while the case on hearing was still before this court, Armstrong also made a motion for rehearing on the issue whether the Fidelity bank was liable for the alleged loan. A rehearing was granted and had, and the following order was made: "That the decree of the circuit court is reversed with leave to the parties to adduce further evidence upon the issue whether the Fidelity bank owes anything to the Chemical bank by virtue of the alleged loan; that if the issue is decided in favor of the receiver the bill shall be dismissed, and a decree entered in favor of the receiver for the restitution of the $100,000 paid by the receiver on July 25, 1892, to the Chemical bank on the faith of the decree of the court below; that if the liability of the Fidelity bank for the loan is established, a decree shall be entered directing the receiver to allow the claim for $305,450 (being the amount of the loan and interest to the date of the declared insolvency, June 21, 1887)," and to pay the dividends accrued and accruing thereon, with interest on delayed dividends, taking credit for the $100,000 already paid on the principle ordinarily applied in partial payments. 31 U. S. Ap., 75. New evidence was accordingly adduced in the circuit court by both parties, and, upon the whole record, the circuit court held the Fidelity bank liable for the loan, and thereupon entered a decree against the receiver in accord with the mandate of this court, for the allowance of the claim for $305,450, and for the payment, by way of dividends and interest, after crediting the $100,000 paid July 25, 1892 (referred to above), of $117,749.58, with interest from October 21, 1896. The opinion of Judge Sage, who presided in the circuit court, is reported in 78 Fed. Rep., 339.

The facts disclosed by the record are thus:

On February 28, 1887, Harper, vice-president of the Fidelity bank, mailed at Cincinnati, to the cashier of the Chemical bank in New York, a letter, of which the following is a copy:

332 Briggs Swift, president; E. L. Harper, vice-president; Ammi Baldwin, cashier; Benjamin E. Hopkins, ass't cashier.

United States depository,

The Fidelity national bank.

CINCINNATI, *February* 28, 1887.

Wm. J. Quinlan, Jr., cashier Chemical national bank, New York city.

DEAR SIR: Enclosed herewith we hand you for credit our certificate of deposit No. 345 for $300,000, with bills as collateral, as follows: (Then was set out a list of twenty-seven notes, aggregating $326,000.) We desire to keep a large reserve with you, and we trust you will make the rate as low as you proposed some time since. Please place the amount to our credit and advise the rate.

Respectfully yours, E. L. HARPER,
Vice-President.

The certificate of deposit inclosed was as follows:

The Fidelity national bank.

E. L. Harper has deposited in this bank three hundred thousand ($300,000), payable to the order of himself on return of this certificate in current funds.

$300,000. AMMI BALDWIN, *Cashier.*

Indorsed, "E. L. Harper."

This letter of February 28th was not copied into the letter-press copy books of the Fidelity bank, and the stub of certificate of deposit was marked "canceled." Of the collateral bills receivable sent, nineteen pieces, aggregating $146,169.29, par value, were the property of the Fidelity bank, and the remainder, aggregating $180,000, were mere accommodation paper procured by Harper and not appearing on the books of the Fidelity bank.

The letter reached New York on March 2d, and, upon that day, Quinlan, cashier of the Chemical bank, wrote and mailed the following letter:

NEW YORK, *March* 2, 1887.

A. Baldwin, Esquire, cashier.

DEAR SIR: Your favor of the 28th inst. has been received. We credit Fidelity national bank $300,000, and shall be considerate as to rate of interest when the loan is paid. * * *

WM. J. QUINLAN, JR., *Cashier.*

Upon the books of the Chemical bank was entered, on March 2d, this credit in favor of Fidelity:

Fidelity temp. loans..... .....$300,000

333 Upon the 2d of March, two days before Harper could have received the answer, he directed Watters, the general bookkeeper of the bank, to credit his (Harper's) individual account

with $300,000, and to charge the Chemical bank with the same on account of "transfer of funds." These two entries taken together, meant that Harper had deposited $300,000 in the Chemical bank to the credit of the Fidelity bank, and that the same had been carried to his individual credit on the books of the latter bank.

On May 19th the following telegram was sent to the Chemical bank:

CINCINNATI, *May* 19, 1887.

To Chemical national bank, New York:

We send other bills to take place. Will want all returned here without presenting, as we advised parties to arrange payment here

FIDELITY NATIONAL BANK.

On May 20th Harper wrote and mailed the following letter:

MAY 20, 1897.

William J. Quinlan, Jr., cashier, New York.

DEAR SIR: Please do not present any of the collateral paper for payment. We have advised parties we would order back and charge up here. We will tomorrow send you new notes to take place of ones maturing. We will pay the loan July 15th, and will pay interest till that date, if agreeable to you.

Yours truly, E. L. HARPER, *V. P.*

On May 21st Harper wrote and mailed the following letter:

CINCINNATI, *May* 21, 1887.

Chemical national bank, New York city.

GENTLEMEN: Inclosed herewith we hand you to hold as collateral the following bills: (Then follows a list of twenty-one notes, aggregating $230,592.46.)

Will you kindly return to me the following: (Then follows a list of nineteen notes of those forwarded in his letter of February 28th.)

We will pay the loan July 15, 1887, if agreeable to you, and will pay interest now to that date.

Respectfully yours, E. L. HARPER,
Vice-President.

The substitution of collateral was effected in accordance with Harper's request.

Nothing was paid on the loan, and nothing collected by the Chemical bank on the collateral, until after the suspension of the Fidelity bank.

There is affirmative evidence that three or four of the nine directors had no actual knowledge of this loan. And there is no evidence that any of the other directors had knowledge of it
334 except Harper and Baldwin, and probably Hopkins, the assistant cashier, who were all directors.

The Chemical bank based its contention that the Fidelity bank was liable for this loan on several grounds.

First. That it was the custom, in New York and Cincinnati, for banks to borrow money, one from another, and that the executive officers of the bank—the president, the vice-president and the cashier, or either of them—were, by custom, regarded as having authority to contract such loans.

Second. That the directors of the Fidelity bank had entirely abandoned to Harper the direction and management of the affairs of the bank, and thereby conferred upon him all necessary authority to do what they might do.

Third. That the Fidelity bank had full notice of the loan nearly three months before the suspension, and, by failure to repudiate it, ratified it.

Fourth. That the Fidelity bank received the money and used it in its legitimate business, and is liable therefor as for money had and received.

It is convenient to state the facts of the case under these four heads:

First. Upon the question of custom, seven witnesses were called from New York city and six from Cincinnati by the complainant and appellee. Wm. J. Quinlan, cashier of the Chemical national bank since 1878, testified that prior to the decision in the Western Bank case, it was a very usual thing for a national bank to borrow money; that the officer who acted for the bank was either the president, vice-president, cashier or assistant cashier; that never, in the many years during which the custom prevailed, had the lending bank demanded proof of the authority of the borrowing officer in the form of a resolution of the board of directors; that the loans so made were in amounts large and small, and that the loans were made either upon certificates of deposits, made payable to the lending bank or indorsed in blank, or merely upon request by letter; that collateral was usually required to the amount of the loan, in the shape of bills receivable.

George G. Williams, president of the Chemical bank since 1878, and connected with it for forty years as discount clerk, paying teller, cashier and president, and for many years connected with the New York clearing-house, testified that it was usual for one bank to borrow money of another before the Western Bank decision; that it was done by a rediscount of its bills receivable, by its own note secured by collateral or by a certificate of deposit; that the borrowing bank was represented in the transaction by the president, vice-president, or cashier, or other executive officer who was authorized to sign drafts and letters for the bank; and that, before the decision in the Western Bank case, the lending bank never required any evidence from the board of directors as to the authority of the borrowing officer, because the New York decisions were express to the point that it was not necessary; that his own bank did not borrow money, but that he had had a long experience in lending money for his bank to other banks.

335 Dumont Clarke, president of the American Exchange national bank for two years, and connected with it for thirty years as assistant cashier, cashier and vice-president, testified that

prior to the decision in the Western Bank case it was a very common occurrence for one bank to borrow of another; that the cashier or the president, or one of the officers acted for the borrowing bank; that the lending bank never required proof of special authority granted to the borrowing officer by his board of directors; that the loan was made either by rediscount of bills receivable or by a note of the borrowing bank, with collateral, or by a certificate of deposit, with collateral; that he knew the custom from the course in his own bank and by information as to the course in other banks; that his bank never borrowed money.

A. B. Hepburn, president of the Third national bank for two years and a half, Comptroller of the Currency for several years, national bank examiner for three years and superintendent of the New York State bank department for four years, testified that it was a usual thing for banks to borrow money from other banks prior to the decisions in the Western Bank case; that either of the executive officers—the president, vice-president, cashier or assistant cashier—acted for the borrowing bank in such transactions; that the lending bank never required any proof as to authority of the borrowing officer, but relied on the genuineness of his signature to the application and correspondence, and protected itself by passing the money to the credit of the borrowing bank upon the books of the lending bank, so that it could only be drawn out by the checks of the officers in the regular course of business; that he never knew of an instance where the lending bank required a grant of special authority by the board of directors of the borrowiug bank to the borrowing officer; that the form of the loan was usually either a direct rediscount of bills receivable, with a margin of 20 or 25 per cent., or a note, with the bills as collateral, or a certificate of deposit; that loans were sometimes made on the unsecured note of the borrowing bank.

Edward Townsend, cashier of the Importers' & Traders' national bank for fifteen years, testified that it was usual for one bank to borrow money of another; that any official, whose signature was authorized with the lending bank, acted for the borrowing bank; that never, prior to the decision in the Western Bank case, did the lending bank require a resolution of the board of directors of the borrowing bank; that the loan was effected either by rediscount of bills receivable or by a note, with collateral, or by certificate of deposit; that no change had taken place in the practice of his bank since the Western Bank decision.

George F. Baker, president, cashier and teller of the First national bank for thirty years, testified that it was a usual thing for a bank to borrow money from its correspondent bank; that any of its executive officers acted for the borrowing bank; that no resolution of the directors evidencing the officer's authority to borrow the money was ever required before the Western Bank decision, but that such a resolution is now generally required; that the witness's own bank had litigation with the receiver over a loan made by it to the Fidelity through Harper.

336 Frederick D. Tappan, for twenty-seven years president of the Gallatin national bank, and connected with that bank for forty-five years, testified that it was a usual thing for a bank to borrow of its correspondent bank; that the president, the vice-president or the cashier acted for the borrowing bank; that the lending bank never required any special authority from the board of directors of the borrowing bank, prior to the Western Bank decision; that the loans were usually evidenced by notes, with security attached, and sometimes by a certificate of deposit; that ever since the Western Bank decision no change had occurred in the custom in witness's bank, and that collateral on such loans was not always required.

The first of the Cincinnati witnesses was M. M. White, who had been president of the Fourth National Bank of Cincinnati for fifteen years, and cashier for six years prior to that. He testified that it was a usual occurrence, and regarded as legitimate in the line of banking business, for one bank to borrow money of another; that never, until the decision of the Western Bank case, had the authority of the executive officer of the bank—the president, vice-president or cashier, to convey the liability of the bank upon his signature in borrowing money from another bank—ever been questioned among Cincinnati banks; but that since the Western Bank decision many banks had required a resolution of the directors of the borrowing bank before making a loan; that it was an extraordinary thing for a banker in Cincinnati to borrow from $300,000 to $500,000 for his bank; that where a bank is short of money and long in bills, as frequently occurs, it was legitimate and proper, and not an unusual thing, for a bank to rediscount freely and build up its cash; that the witness's bank had once borrowed $75,000 for such a purpose; that it was reported to the directors, and all such transactions should be reported by the acting officers to the directors.

W. A. Goodman, twenty years a banker and president of the Lafayette national bank, testified that it was not a very unusual or extraordinary thing for a bank to borrow of its correspondent; that it was rather unusual, but was done frequently, though the witness's bank never did it; that witness's bank had not many country correspondents; that in making loans by rediscounting their paper, no resolution of their board of directors was required; that he never had an application by a bank to borrow money on its own name, but that on such an application he would have required a resolution from the board of directors.

W. S. Rowe, cashier of the First national bank, testified that before the decision of the Western Bank case it was considered within the scope of the duties of a cashier to borrow money for his bank; that the country banks often borrowed money; that it was generally done by correspondence; that the letter would be signed by either the president, vice-president or cashier; that it was done either by rediscounting or by a direct note, signed by an executive officer of the bank, and that a resolution of the directors was never required; that the witness's bank had loaned as much as $150,000 to a country

bank on bonds and securities; that the bank of Goodman,
337 the last witness, did only a local business, and lent little or nothing to country banks; that such loans were always reported to the directors of the lending bank; that by country banks witness meant banks in the small cities in the agricultural districts, where, when crops were to be moved, more money was needed than they had; that witness would not regard it as good banking for an officer of a bank to borrow $300,000 without consulting his directors; that witness's bank did not borrow money.

H. C. Yergason, president of the Merchants' national bank, testified that his bank had occasionally made loans to country banks, but had never required any authority from the directors, and had deemed the authority of the executive officer sufficient; *this* his bank had occasionally borrowed money, but the directors had always been consulted before doing so.

Griffith P. Griffith, vice-president of the Citizens' national bank, testified that he had been vice-president and cashier of his bank fifteen years; that he had been assistant cashier of the First national bank from 1863 to 1866, and cashier of the Third national bank from 1867 to 1880; that it was a usual thing for banks to borrow money of their correspondent banks when applied for either by the president, the vice-president or the cashier of the borrowing banks, and that no proof of any special authority from directors was demanded from such officers; that the loans were made almost entirely by correspondence, and the proceeds of the loan were credited on the books of the lending bank to the borrowing bank; that the loans were made either by rediscount or by direct loans, with bonds or good securities; that banks with which he had been connected had not been in the habit of borrowing money; that witness would not hesitate to rediscount bills without consulting his directors, if there was a run on the bank.

J. D. Hearne, president of the Third National Bank of Cincinnati, and former president of the Covington City bank, testified that it was an ordinary thing for one bank to borrow of another, and that prior to the decision in the Western Bank case it was not customary for the lending bank to require from the borrowing bank a resolution from the board of directors; that the executive officers of the borrowing bank acted for it in the transaction; that no proof was required of special authority in those officers; that it was regarded as falling within the scope of the duties of cashier, president or vice-president to borrow money on behalf of his bank from another bank; that loans were made by a rediscounting and by direct loans, with bills receivable, or other collateral; that sums lent by his bank to other banks were usually not large; that witness had borrowed money in large sums for his banks; that he always consulted his directors before borrowing; that he never advised the lending bank in such cases of the approval of his board of directors, because it was never requested; that since the decision in the Western Bank case the custom had changed, both in his bank and in other banks with whose mode of business he was familiar, and that a reso-

lution of the board of directors is now required by them before lending money to a bank.

338 No witnesses upon the subject of custom were called by the receiver.

Second. E. L. Harper was a director, Ammi Baldwin was cashier and Benj. Hopkins was teller of the Third national bank. While occupying these positions they had been engaged together in wheat gambling, and had been charged with misconduct in the management of that bank in connection with the gambling. In February, 1886, Harper and others organized the Fidelity bank, and the bank opened for business March 1st. Harper took more than one-quarter of the stock. He was elected vice-president; Baldwin, cashier, and Hopkins, assistant cashier. Shortly after organization a committee of the directors investigated the charges concerning Harper, Baldwin and Hopkins, made by Hearne, then president of the Third national bank, but the directors declined to hear the report. Alter, a director, who wished to read the report, made himself still more obnoxious by asking to see the call-loan account, but access to it was denied him. The directors held four meetings in 1886—one in February to elect officers, the second in May to appoint a committee to draft by-laws, the third in August to approve the by-laws and the fourth a special meeting to vote a dividend. No other business was done by the directors during that year, and Harper managed the bank without the slightest supervision of any kind. At the annual election Alter was dropped as a director, and of the nine elected, Harper, Baldwin and Hopkins, Mathews, Harper's brother-in-law, and Gahr, his confidential secretary, constituted a majority. Mathews and Gahr were, confessedly, Harper's puppets in the board. He gave them ten shares each to qualify them, and then each also held a large amount of stock in his name, which belonged to Harper. Mathews was first elected in February, 1886, and resigned to allow some one else to be elected in his place. He was re-elected in January, 1887, to take the place of Alter and remained in the board to the end. The explanation of his position in the board, and of that of Gahr, is seen by the following question and answer:

Q. Mr. Mathews, you said something a little while ago off the record, which did not go down in the stenographic report—something about your directorship being nominal. Will you explain what you meant by that?

A. Yes, sir. It was understood between Mr. Harper and me—and I think the same is true as to Mr. Gahr—that we were to be directors only until others were found to take our places; and, in explanation, I will say that one time Mr. Harper told us that one of us would have to step out—that one of us would have to resign as director to allow somebody else to supply the place—and I know Mr. Gahr and I tossed coppers to see which of us would withdraw.

Mathews was not only Harper's brother-in-law, but he was one of the executive officers of Harper's corporations—the Riverside Rolling Mill Company, Swift's iron & steel works, and E. L. Harper & Co.

In January, 1887, Harper and Hopkins entered upon a compre-

hensive scheme of wheat gambling, and Baldwin was acces-
339 sory thereto. In carrying out their plan, Harper raised money by discounting, with the funds of the bank, the paper of E. L. Harper & Co., Swift's iron & steel works, and the Riverside Rolling Mill Company, in all of which companies he was the controlling member, and also by cashing the checks of these companies and carrying the checks as cash on the books of the bank. This was done with the knowledge and connivance of Mathews, the director. In these ways Harper consumed of the money of the bank, between January and June, $750,000. The daily discounts were recorded in a book, which was open to the inspection of the directors. Kineon, one of the directors, repeatedly called the attention of Swift, the president, to the large discounts in favor of Harper's companies and objected to it. Swift reported the matter to Harper, who said that if Kineon ran the bank he would keep all the money in the bank. Swift called Kineon's attention to Harper's large credits, and Kineon wanted to know where he got them. No further investigation or inquiry was made, however, until Kineon's resignation, hereafter described.

Harper's brokers in the wheat deal were Wilshire, Eckert & Co. He advanced, from the funds of the bank to that firm, on their notes and by cashing their checks and carrying the same in cash, a million and a half dollars, to be expended for his benefit in buying wheat on the Chicago market. He advanced, from the funds of the bank by way of discounts, to Whitely, Fassler & Kelly, a firm who were interested in the wheat deal, $375,000. He borrowed in February and March, 1887, in the name of the Fidelity bank, from the First National Bank of New York, $400,000, used $113,000 of the Fidelity bank's bills receivable in so doing and had $400,000 transferred to his credit on the books of the Fidelity bank, without exhibiting any written evidences of his right to such credit. He borrowed, in the name of the Fidelity bank, from the Chemical bank, the $300,000 here in controversy, in March, 1887, and forwarded as security $146,000 of the bills receivable of the Fidelity bank. In June, 1887, in order to tide over the stress in which the bank then was, he borrowed from the Chemical bank about $1,000,000 and transferred to that bank bills receivable of a greater value. He did this without any action by the board of directors. During this period of less than six months, over which these transactions extended, the board of directors held five meetings—one meeting in January to elect officers, another in February to approve of Harper's purchase of $340,000 in Government bonds to qualify the bank as a United States Government depository. These bonds were bought from the First National Bank of New York, and as a part of the contract of purchase that bank agreed to lend the $400,000 already spoken of, but it does not appear that this was known to the directors. The third meeting was held in March to declare a dividend; the fourth in March to vote an increase of stock, and the last in May, when Kineon, a director, demanded that the bills receivable be examined. Harper objected and told Kineon he ought to resign. Kineon said he would if Harper would buy his stock, which

Harper then did. A committee of directors was then appointed to examine the bills receivable, but no record is made of its re-
340 porting. No other business was done by the directors than has been stated.

The by-laws of the bank provided for monthly meetings, but during the year 1886 five meetings failed for want of a quorum. The by-laws provided that the president, vice-president and cashier should have power to discount and purchase bills, notes and other evidences of indebtedness, and to buy and sell bills of exchange, and to sign all contracts, drafts and checks. The cashier was made responsible for all the moneys, funds and valuables of the bank and was required to deliver the same to the order of the directors. The president and vice-president were made responsible for all sums of money and property entrusted to them or placed in their hands by the cashier. The last by-law expressly forbade the carrying of checks or other memoranda as cash, but required them to be entered upon the books as call loans. In spite of this, Mathews, one director, was privy to the carrying of $400,000 for several months in this way for Harper's accommodation. The president, Briggs Swift, and Chatfield and Moorehead, directors, were also accommodated in this way. Watters, the general book-keeper, testifies that from the beginning to the end of the bank, the entries of cash upon the book were false, because of these so-called cash items; and Hinsch, the assistant receiving teller, testifies that nothing was carried as a cash item except upon Harper's order.

Armstrong, the receiver, filed a bill against the directors to recover compensation for the loss occasioned and made possible by their negligence and failure to supervise Harper's control of the bank. He charged them therein with liability for losses arising from excessive loans made by the banks to Wilshire, Eckert & Co. to Harper's companies, and to Whitely, Fassler & Kelly. He also charged them with permitting Harper, by their negligence, to embezzle more than $500,000, and from the evidence adduced in support of the averment, it is clear that this charge referred to the transfer of funds by Harper, to his credit, of $700,000, at the times when he had obtained the loans from the First national bank and the Chemical National Bank of New York. The solvent directors compromised the suit by paying the receiver $450,000, of which Swift, the president, paid $300,000; Chatfield, one director, $100,000, and Pogue & Zimmerman the remaining $50,000. Watters, the general book-keeper, testified that Harper controlled all the affairs of the bank; that no one else attempted to supervise his action in this regard, and that the directors permitted him to run the bank as he thought best.

Kincon, director, testified that "Harper did everything. He ran the whole bank," and that the directors were aware of this.

Hinsch, the assistant receiving teller, testified that Harper dictated as to all the operations of the bank.

Armstrong, the receiver, in his bill against the directors, said: "And complainant further avers that the said E. L. Harper, vice-president of said association, was permitted by the said directors of

said bank to manage the affairs of said banking association and to have charge and control of its moneys and assets without any
341 investigation or control of his management of the business of said banking association."

Again the bill averred as follows:

"Complainant further says that the said E. L. Harper, in connection with the said Ammi Baldwin and Benjamin E. Hopkins, had been theretofore, and for many years prior to the transactions in this petition alleged, engaged in excessive and reckless speculations in wheat and other commodities, and were well known to the president and directors of said association to be excessive and reckless speculators, and wholly unfit to have the charge, management and control of the moneys, assets and affairs of the said The Fidelity National Banking Association; and complainant avers that by reason of said facts and the knowledge thereof, the said president and directors were put upon inquiry as to the management of the affairs of said banking association, and the safe keeping and investment of its moneys and other properties, during the whole time, during which the money of said association was being loaned and embezzled and misappropriated, as hereinbefore set forth; yet the said president and the said directors, and each of them, in gross and wilful disregard of their duty as such directors, wholly failed to exercise the slightest diligence, or make the slightest investigation of the conduct of the business of said bank; and that any investigation of the affairs of said bank, or examination of its books and of the evidences of indebtedness held by said bank, would have disclosed to the said president, or either of said directors, that the moneys of said bank were being loaned, and liabilities to said bank were being contracted, in violation of the law, and that the affairs of said bank were being mismanaged and its moneys and assets were being embezzled and misappropriated in the manner hereinbefore set forth; and that the exercise of proper care and diligence in the discharge of their duty as president and as such directors, would have prevented the losses described to said banking association."

Third. The Chemical bank was the reserve agent and correspondent of the Fidelity bank from its organization to its suspension, and the latter kept a regular deposit with the former. At the end of each month the Chemical bank transmitted to the Fidelity bank an account current, showing the debits and credits for the month as taken from its ledger account. This account current was compared by the book-keepers of the Fidelity with the books of the Fidelity, and the differences noted on what was called a reconcilement sheet, which was returned to the Chemical bank, where the differences were examined and correspondence with explanations ensued. Upon April 1st the Chemical bank sent an account current for the month of March, in which the Fidelity appears credited as of date March 2, 1887, "tem. loan, $300,000." The book-keepers of the Fidelity bank negligently overlooked the discrepancy between the account current of the Chemical bank and their own books as to this item in that in the account it appeared as a temporary or call loan from the Chemical to the Fidelity bank, while

on their books it appeared not as the proceeds of the obligation of the bank, but only as a deposit by Harper in the Chemical
342 bank to the credit of the Fidelity bank. Accounts current and reconcilement sheets passed between the two banks on April 1st, May 1st, and June 1st.

In June, 1887, the Chemical bank advanced $1,000,000 to the Fidelity bank as a loan, by way of overdrafts, and received notes as collateral, exceeding in value the amount. The validity of the loan has never been disputed by the receiver. The circumstances under which it was made do not appear in the record, though the minutes fail to show that it was ever authorized by resolution of the directors. The Chemical bank paid itself the $1,000,000 out of the collateral, after the suspension of the Fidelity bank, and sought to use the surplus remaining for payment of the $300,000 loan, claiming that all the collateral held by it was equally applicable to both debts. The receiver, though not at that time denying the liability of the Fidelity bank on the $300,000 loan, disputed the right of the Chemical bank to "mass" the collateral, and contended that only the collateral deposited with each obligation could be applied to it. In an equity suit in the United States circuit court of New York, this issue was decided in favor of the receiver.

Fourth. The $300,000 credit of March 2, 1887, in the Chemical bank was drawn against by the Fidelity bank in the usual course of business and went to pay concededly legitimate obligations of the latter bank. It was all drawn out before April 1, 1887. Harper's account, including the transfer of $300,000 to his credit, was largely overdrawn when the Fidelity bank went into the hands of the receiver, June 21, 1887.

TAFT, circuit judge, delivered the opinion of the court:

Can the case before us be distinguished on any satisfactory grounds from that of Western National Bank against Armstrong, 152 U. S., 346? If not, the decree of the circuit court must be reversed.

In the Western Bank case, it appeared that by a letter of May 16, 1887, Harper asked for a loan from the Western bank of $200,000, and inclosed four notes for $50,000 each, due in four months, signed by A. P. Gahr and indorsed by Harper, and secured by 1,600 shares of Fidelity bank stock. The letter, though written on a letter-head of the Fidelity bank, was signed by Harper in his own name, without any official designation, but contained a request that the proceeds of the loan be put to the credit of the Fidelity bank on the books of the Western bank. This credit was, in a short time, exhausted, by drafts drawn in the name of the Fidelity bank, and signed, some of them, by Hopkins, the assistant cashier, and the remainder by Harper himself. The money thus drawn was appropriated by Harper to his own use, and never came into the actual possession or use of the Fidelity bank, and was not applied in any way for its benefit. There was evidence that Harper was vice-president and general manager of the business of the Fidelity bank.

The only question argued by counsel in the Supreme Court

was whether Harper and Jordan, who made the loan for the
343 Western bank, intended a loan to Harper or to the Fidelity bank.

The Supreme Court based its decision upon a ground not advanced or discussed, and held that even if Harper intended to bind his bank by this loan, he had no general authority, as its vice-president and principal executive officer, to do so, and that the record did not show any special authority conferred by the directors upon him for the purpose. The court further held that there was no evidence of a subsequent ratification of the loan by the directors, or of a receipt of the proceeds by the bank to its use and benefit.

Upon the question of the power of Harper and the directors, the court, speaking by Mr. Justice Shiras, used the following language:

"The most that can be claimed in this case is, that Harper acted as the principal executive officer of the bank. It cannot be pretended that, as such, he had power, without authority from the board, to bind the bank by borrowing $200,000 at four months' time.

"It might even be questioned whether such a transaction would be within the power of the board of directors. The powers expressly granted are stated in the eighth section of the national bank act (Rev. Stat., sec. 5136, par. 7): 'A national bank can exercise, by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security, and by obtaining, issuing and circulating notes.'

"The power to borrow money or to give notes is not expressly given by the act. The business of the bank is to lend, not to borrow, money; to discount the notes of others, not to get its own notes discounted. Still, as was said by this court, in the case of *First Nat. Bank v. Nat. Exchange Bank*, 92 U. S., 122, 127, 'authority is thus given in the act to transact such a banking business as is specified, and all incidental powers necessary to carry it on are granted. These powers are such as are required to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs, within the general scope of its charter, safely and prudently. This necessarily implies the right of a bank to incur liabilities in the regular course of its business, as well as to become the creditor of others.

"Nor do we doubt that a bank, in certain circumstances, may become a temporary borrower of money. Yet such transactions would be so much out of the course of ordinary and legitimate banking as to require those making the loan to see to it that the officer or agent acting for the bank had special authority to borrow money.

"Even, therefore, if it be conceded that it was within the power of the board of directors of the Fidelity national bank to borrow $200,000 on time, it is yet obvious that the vice-president, however

general his powers, could not exercise such a power unless
344 specially authorized so to do, and it is equally obvious that persons dealing with the bank are presumed to know the extent of the general powers of the officers."

The reasoning of the court is here based upon two propositions; first, that the borrowing of money by a bank is not within the ordinary business of the bank; and, second, that because it is of an extraordinary character, it is not within the scope of the power of the chief executive officer of the bank, without special authority conferred by the governing body of the bank—the board of directors. The court does not hold that the national banking act either expressly or impliedly forbids a bank to borrow money, but only that the power to do so is not expressly given by the act. The court concedes that, among the incidental powers necessary to carry on the banking business, is the power, under certain circumstances, temporarily to borrow money; but says, in effect, that it is so much out of the course of ordinary and legitimate banking that the executive officers of the bank, who have only authority to transact the ordinary business of the bank, could not exercise the power to borrow money, without special authority from the directors.

No special authority appears by the record to have been conferred on Harper to borrow the money here in question, but complainant below sought to establish the necessary authority by evidence that in New York and Cincinnati the executive officers of the bank were, by a general banking custom, accorded authority to borrow money on behalf of their banks. Two questions arise upon this evidence. Does it establish the custom? If it does, can the proof of the custom supply the place of the special authority decided by the Supreme Court to be necessary?

We have set out in the statement of the case, at perhaps too great length, a résumé of the evidence as to usage, because its sufficiency has been vigorously attacked by the counsel for the appellant. We think that the evidence establishes, in a most satisfactory way, that in 1887, when the loan at bar was made, and for many years previous, it was the frequent practice of banks in the interior to borrow money of their New York correspondents; that a similar practice prevailed in Cincinnati between the country banks in the neighboring territory and their Cincinnati correspondents, and that the borrowing was always done by one of the executive officers of the borrowing bank, and usually by letter; that no special authority from his board of directors was ever required, and that by the usage of banks in those two cities, at least, he was treated as having adequate authority for the purpose, as between his own bank and the lending bank. The only witness whose statement may be considered as falling short of this is W. A. Goodman, of Cincinnati, and he seems to have had little experience in transactions with country banks, and none in borrowing money for his own bank.

It does not militate against our conclusion that several of the witnesses testified that it was usual and proper for the borrowing officer to consult his directors before obtaining the loan, or to report it to them afterward. There are many important transactions

of the bank concededly within the power of the executive
345 officers, concerning which they consult their directors, or of which they make report. The question here is not what is the customary duty of a cashier or other executive officer in keeping his directors informed of what he is doing, but it is, what is his customary authority in acting on behalf of this bank and borrowing money from other banks?

It does not detract from the weight of the evidence that the banks of a majority of the witnesses do not borrow money. It is the lending bank who has to decide in such cases upon the question of appearance of authority, and their officers are best able to say what is the authority in the matter of borrowing, which well-known usage gives to the executive officers of the borrowing bank. Moreover, three of the Cincinnati witnesses had borrowed money for their banks, and their evidence was like that of the others.

Nor do we see how it affects the question of authority of the borrowing officer that collateral is usually demanded from the borrowing bank, and that the proceeds are credited in the books of the lending bank to the borrowing bank, to be drawn out in due course on drafts of the latter. This course of business, which operates as a check upon possible fraud by the officer assuming authority to borrow, does not indicate that he is not given, by custom, the requisite apparent authority to contract the loan on behalf of his bank; but, on the contrary, suggests a reasonable explanation why a custom, by which banks of the borrowing class might otherwise be prejudiced and exposed to risk of loss by the frauds of their executive officers, has been accepted and acquiesced in by them.

The failure of the defendant to call witnesses to contradict the evidence of the complainant upon the question of usage, lends most significant support to the view that it was well known and generally acquiesced in. *Summer v. Tyson*, 20 N. H., 384-387; *Citizens' Insurance Company v. McLaughlin*, 53 Pa. St., 490.

The New York and Cincinnati witnesses strongly corroborate each other as to the usage prevailing in both places; for it is well settled that the existence of a well-known usage in one place, or in one trade, has a tendency to establish the same usage in the same trade in another place similarly situated, or in a closely allied but different trade. *Citizens' Insurance Co. v. McLaughlin*, 53 Pa. St., 490; *Falkner v. Earle*, 3 Best & Smith, 360; *Fleet v. Murton*, L. R., 7 C. P., 126.

The next question is whether the usage proven can make up for the absence of proof of Harper and Baldwin's special authority to contract this loan. The theory upon which it is offered is, that bank directors in Cincinnati, who committed to their executive officers authority to conduct the business of their bank with a New York correspondent bank, were presumed to know the apparent authority which New York usage in the banking business would attribute to those officers, and are estopped, in the absence of special notice to such correspondent bank, to deny that those officers had actual authority equivalent to their customary authority. We think this theory to be sound. The borrowing was done in New York,

and it is New York usage which is important here. Bank
346 directors in Cincinnati, doing business in New York, are presumed to know the usages in that city; at least, so far as they affect out-of-town banks. *Goodenow v. Tyler*, 7 Mass., 36–47; *Dwight v. Whitney*, 15 Pick., 179–183; *Lewis v. Marshall*, 7 M. & G., 729–744; *Leach v. Beardslee*, 22 Conn. Rep., 404; *Cropper v. Cook*, L. R., 3 C. P., 194; *Bibb v. Allen*, 149 U. S., 481. The presumption of knowledge by the bank directors of the Fidelity bank, of the New York usage is greatly strengthened in this cause by proof that the same usage prevails with respect to the officers of banks bearing the same relation to Cincinnati banks which Cincinnati banks bear to New York banks. Well-established usages of a trade are presumed to be known to all persons engaged in that trade. *Carter v. Philadelphia Coal Co.*, 77 Pa. St., 286. It is noteworthy that the receiver did not call a single witness from the directors of the Fidelity bank to rebut this presumption as to their knowledge of the usage.

But it is said that to give such effect to the usage is, in effect, to refuse to follow the authority of the Western Bank case. We cannot understand why. Usage is a matter of fact until it becomes so general and well known to the courts, and is so often recognized by them, as to be crystallized into law. There was no evidence of usage adduced or considered in the Western Bank case. That makes a broad distinction between that case and the one at bar.

Again, it is said that the usage is illegal, because contrary to the law of the Western Bank case. The court in that case did not decide that it was unlawful to entrust the vice president or cashier with power to borrow money for his bank; it only held that in the absence of special authority, conferred either by by-law or resolution of the directors, such authority did not appertain to the office of cashier or vice-president, but remained with the directors. The manifest inference, from the language of the opinion is, that if the directors chose to do so, they might have expressly conferred such authority by a by-law. If they could do this by a by-law, why may they not by acquiescence in a well-known usage effect the same result? Can, therefore, a usage which assumes the conferring of authority be unlawful? We think not.

It cannot affect the validity of the usage that it may have derived strength from, or even had its origin in decisions of the State courts, which differ from the decision in the Western Bank case. It is undoubtedly true that there were decisions in the State courts of New York, Pennsylvania, Missouri, Wisconsin and Ohio (*Barnes v. Ontario Bank*, 19 N. Y., 152; *First National Bank of Allentown v. Sullivan*, 11 W. N. C., 362; *Donnell v. The Lewis County Savings Bank*, 80 Mo., 165; *Sturges v. The Bank of Circleville*, 11 Ohio St., 153, 167; *Rockwell v. Elkhorn Bank*, 13 Wisconsin, 653; *Ballston Spa Bank v. The Marine Bank*, 16 Wisconsin, 120–134), which take a different view of the implied authority of the cashier to borrow money for his bank; but if these decisions have given rise to a usage in New York and Cincinnati well known and recognized by bankers in both places, and having only the same result which might lawfully

be brought about by express action by each board of bank di-
347 rectors, it is difficult to see why, because the origin of the usage may have been in an erroneous view of the law of implied authority of a cashier, it should not be binding on those who engage in business with a knowledge of, and acquiescence in it.

In *Merchants' Bank v. The State Bank*, 10 Wallace, 604, a suit between two national banks, the question was whether the cashier of one of them had authority to certify three checks, amounting in all to $600,000, to pay for certain gold coin bought of the other. It did not appear that the cashier had ever certified checks before, or bought gold. Evidence by the officers of twenty-two banks in Boston was admitted to show a usage, by which, without by-law or vote, powers were intrusted to cashiers of such banks to borrow and lend the money of their banks of and to each; to buy and sell exchange of and to each other, and in all such transactions to pledge the credit of their respective banks—usually by cashiers' checks; sometimes by certificates of deposit or memoranda; that these transactions were frequent, involving large sums of money, and that they were uniformly conducted in faith of the implied powers of cashier without inquiry. The Supreme Court held the evidence competent for the jury to consider, on the issue, whether the cashier had power to buy gold and certify checks without special authority from the board of directors. The ruling in this case certainly upholds the view that a well-known usage, by which an executive officer of a bank exercises authority to do acts on its behalf, which otherwise could only be done by the directors, is equivalent to a specific delegation of authority by the board. It is worthy of note that the usage, which was here held admissible to show apparent authority, was one by which cashiers were permitted to borrow large sums of money for their banks, without receiving special authority from their directors. It is hardly conceivable that the Supreme Court would have held such usage admissible in evidence, if it was illegal or unreasonable.

Our conclusion is that the complainant, by its proof of usage, has taken this case out of the rule laid down by the Supreme Court in the Western Bank case, and has shown thereby that Harper and Baldwin had apparent authority to make this loan for the Fidelity bank.

Second. The conclusion just reached, based upon the usage of banks, is greatly strengthened when we come to consider the actual authority exercised by Harper in the affairs of the Fidelity bank. It is evident, from the facts set forth at length in the statement of the case, that the board of directors, was practically chosen by Harper for the very purpose of giving him free rein in the management of the bank, and in the use of its funds and its credit to carry on enormous wheat-gambling transactions on the Chicago market. He selected as directors for this purpose, in addition to himself, Baldwin, the cashier, and Hopkins, the assistant cashier, who had previously been engaged in a similar transaction with him at the Third national bank, and who were privy to his present plans; and two of his own employés, Mathews and Gahr, whom

he had qualified by gifts of stock, and who confessedly were only his representatives on the board and quick to do
348 his bidding. When a director manifested any desire to look into his management, he dropped him from the board at the first opportunity. That Harper in this way succeeded in having the whole power of the board of directors delegated to him, in fact, is clearly manifest from what he did in the bank. The indifference of the directors is most emphatically shown by a failure of a quorum to attend the regular monthly meeting for five months, and by the perfunctory and merely formal matters passed upon by the board when a sufficient number did meet. The subordinates in the bank, whose assistance was necessary to Harper in making the transfer of funds to his credit and in carrying in the cash account worthless checks aggregating three times the capital of the bank, recognized Harper as the manager not only of the bank, but of the directors. The slightest questioning of one of them at any time during the last six months would have developed the peculiarities of Harper's control. Indeed, it is quite clear that the flagrant violation of one of their by-laws by Harper, in respect to "cash items," was well known to more than the majority of the board. In order to effect the loan here in question, and other loans, he took from the bank large quantities of the bank's bills receivable, to be used as collateral, without registering any explanation of their whereabouts, and without arousing the slightest inquiry, either by the president or any of the directors. When, near the close, a loan had to be secured in a fruitless effort to save the bank, he negotiated one and sent away a million dollars' worth of bills receivable, without any authority from the board. We think that, for practical purposes, Harper was the bank, and that the directors recognized him as such, and that, included in such a delegation of authority as this condition of affairs implies, was the power to borrow money, if, as held in the Western Bank case, that power rests with the directors. We reach this result not only on the direct evidence, but also upon the bill of the appellant herein filed against the directors, in which the averments paint, in the strongest colors, the supreme authority over bank and directors which Harper was allowed to exercise, and which does not lose evidential force from the fact that the receiver obtained, in compromises, $450,000 from the solvent directors on the character of his averments and the strength of the proof adduced by him in support of them.

In *Martin v. Webb*, 110 U. S., 7, the issue was whether a bank was bound by the act of its cashier in having canceled obligations of its debtor, secured by a first lien on his property, in exchange for a partial payment on them and new obligations secured by a second lien. It was conceded by the court that the ordinary powers of a cashier do not include the release of security and the canceling of any obligation due the bank, except upon payment, but Mr. Justice Harlan, delivering the opinion of the court, set out at some length the circumstances to show that, in fact, the whole business of the bank had been delegated to the cashier by the directors, whose supervision over him was most perfunctory, and who were very

little in the bank, and that if the directors did not abdicate all authority as such, they acquiesced in the cashier's assumption
349 of exclusive management of the bank's business, and held that the directors and the bank could not be heard to deny the requisite authority in the case in hand. Mr. Justice Harlan's language, in closing his opinion, was as follows:

"It is quite true, as contended by counsel for appellants, that a cashier of a bank has no power, by virtue of his office to bind the corporation except in the discharge of his ordinary duties, and that the ordinary business of a bank does not comprehend a contract made by a cashier—without delegation of power by the board of directors—involving the payment of money not loaned by the bank in the customary way. *United States Bank v. Dunn*, 6 Pet., 51; *United States v. City Bank of Columbus*, 21 How., 356; *Merchants' Bank v. State Bank*, 10 Wall., 604. Ordinarily, he has no power to discharge a debtor without payment, nor to surrender the assets or securities of the bank. And, strictly speaking, he may not, in the absence of authority conferred by the directors, cancel its deeds of trust given as security for money loaned—certainly not, unless the debt secured is paid. As the executive officer of the bank, he transacts its business under the orders and supervision of the board of directors. He is their arm in the management of its financial operations. While these propositions are recognized in the adjudged cases as sound, it is clear that a banking corporation may be represented by its cashier—at least where its charter does not otherwise provide—in transactions outside of his ordinary duties, without his authority to do so being in writing, or appearing upon the record of the proceedings of the directors. His authority may be by parol and collected from circumstances. It may be inferred from the general manner in which, for a period sufficiently long to establish a settled course of business, he has been allowed, without interference, to conduct the affairs of the bank. It may be implied from the conduct or acquiescence of the corporation as represented by the board of directors. When, during a series of years, or in numerous business transactions, he has been permitted, without objection and in his official capacity, to pursue a particular course of conduct, it may be presumed, as between the bank and those who, in good faith, deal with it upon the basis of his authority to represent the corporation, that he has acted in conformity with instructions received from those who have the right to control its operations. Directors cannot, in justice to those who deal with the bank, shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business, and to exercise reasonable control and supervision of its officers. They have something more to do than, from time to time, to elect the officers of the bank, and to make declarations of dividends. That which they ought, by proper diligence, to have known as to the general course of business in the bank, they may be presumed to have known in any contest between the corporation and those who are justified by the circumstances in dealing with its officers upon the basis of that course of business."

Now, it is quite true that the holding out in the case at bar was of a somewhat different character from that in the case cited. Here the power to transfer the bank's collateral, the acquiescence in the account currents based on the loan for three successive
350 months, the interchange of collateral, the negotiation by Harper of a second loan for $1,000,000 and the transfer of the requisite collateral, were all circumstances reflecting on Harper's authority, upon which the Chemical bank might rely in either making the loan or not compelling its payment by those contracting it, before the failure.

In *Davenport v. Stone*, 104 Mich., 521, 524, the principle is stated as follows:

"The directors intrusted the entire management of the bank to Mr. Bradley (the cashier). Therefore, neither the bank nor its receiver can now be heard to deny the authority of the cashier to do any of those acts which it or its directors might lawfully authorize the cashier to do." The act in question in that case was the rediscount of a renewal note. In *Wing v. The Bank*, 103 Mich., 565, the same principle was recognized, where the act of the cashier, the validity of which was in issue, was the release of a surety from a note held by the bank. In the *City Bank of New Haven v. Perkins*, 4 Bosworth, 420, the issue was like that at bar, as to the binding effect upon a bank of a loan contracted in its name by one of the executive officers. In that case the cashier had had exclusive control of the bank for several years, without any supervision or interference by the directors. This particular loan the cashier had taken to himself after its proceeds came to the bank. The superior court of New York, made up of Chief Justice Bosworth and Judges Woodruff and Moncrieff, stated, as the principle which led them to hold the bank, that where directors of a bank allow its cashier, for several years in succession, without interference or inquiry by them, to transact the business of the bank in such manner as, in his judgment, may be proper and for its interest, they thereby in effect authorize him to make all and any contracts which he deems expedient in relation to its business that the directors might lawfully make, and such contracts will conclude the bank, as between it and a party who has dealt with it through such cashier, and on the faith of his having authority to make such contracts, has loaned money to such bank, provided the charter of the bank does not prohibit it from making such contracts through its cashier. The case was affirmed by the court of appeals on another ground. *City Bank of New Haven v. Perkins*, 29 N. Y., 554. See also, to the same point, *Cox v. Robinson*, 82 Fed. Rep., 277, a decision by the circuit court of appeals for the ninth circuit.

Third. Another distinction between the Western Bank case and the one at bar grows out of the relation which existed between the Chemical bank and the Fidelity bank as correspondent banks exchanging monthly statements of the account between them for the prior month. In the Western Bank case, there was no such relation between the two banks involved. This difference has an important bearing on the question of notice to the directors

and ratification by them of the loan. The Supreme Court, in the Western Bank case, in effect says, that when the loan was made to the Fidelity bank, at the instance of an unauthorized agent, the lending bank could not predicate ratification
351 of the loan by the Fidelity bank without bringing knowledge of the same home to the directors, the only body in the bank with authority to make the loan. The general rule as to ratification is, as we conceive it, that a failure to repudiate the unauthorized act of an agent can never work a ratification of the act, unless the principal either has actual knowledge, or, by the exercise of due diligence, would have had knowledge of the act. Now, due diligence presupposes an affirmative duty owing from the principal to the other party to advise himself of the fact. In the case of a stranger seeking relations with a principal through an unauthorized agent, no duty arises on the part of the principal toward the stranger to inform himself of an agent's unauthorized acts, because he has the right to assume that the agent will not attempt to exercise authority not intrusted to him, and that a stranger will not credit the agent with greater authority than he has. Such was the Western Bank case, and so the principle stated by the court had full application there. But where there is an existing relation between the principal and the other party, imposing on the former a duty of knowledge in respect of a class of facts which embraces the unauthorized act, then a neglect by the principal to discharge the duty and inform himself will have the same effect as actual knowledge upon the issue of his ratification of the unauthorized act by estoppel. To illustrate, by the case of the *Leather Manufacturers' Bank v. Morgan*, 117 U. S., 96. There a depositor in a bank was held to ratify, by estoppel, his agent's forgeries in raising checks by failure to repudiate them, not because of his knowledge, but because his relation to the bank as a depositor bound him to advise himself, from the statements sent by the bank to him, as to the condition of his account, and the validity of the checks, payment of which was noted therein. Had the forgeries been passed upon a stranger, the principal could not have been held to ratify them in favor of the stranger on the ground that he had been careless in not supervising his agent in the drawing of checks. He would, in that case, have owed no duty to the stranger, of which his careless confidence in his agent would have been a violation. In the case at bar, the Fidelity bank bore much the same relation to the Chemical bank that an individual depositor does to his bank. The Chemical bank submitted monthly statements of the current account between it and the Fidelity bank to the latter bank, and in due course the latter bank returned a reconcilement sheet showing discrepancies, if any existed, and correspondence continued until the differences were explained and reconciled. This was the regular course of business between the two banks from the organization of the Fidelity till its close. The affirmative duty was thereby imposed upon the Fidelity bank to inform itself of the correctness of the items therein charged, and to object to the same if unwarranted or erroneous. Negligence in doing so was a failure of duty toward the Chemical bank,

and was the equivalent of actual knowledge of those things which proper inquiry would have developed. Notice through such accounts was notice to the directors of the items therein contained, because it was notice to the Fidelity bank by the course of business
352 between the two banks. The directors cannot rid themselves of such notice by saying that their agents failed to communicate the facts to them. As between them and the Chemical bank, they were under an affirmative duty to examine into the accounts, and so a neglect by the agents to discharge this duty was their negligence. Now, it might be that if the agent who committed the fraud originally was the only person to make the examination, that his failure to report it could be considered so much a part of his scheme to defraud that notice to him would not be notice to the bank. But here no such difficulty arises. The account current for March and the books of the Fidelity bank differed in this, that the account current showed the source of a credit to the Fidelity bank of $300,000, of the date of March 2, 1887, to be a temporary loan from the Chemical bank to the Fidelity bank. The books of the Fidelity bank showed the source of the same credit to be a deposit in the Chemical bank by Harper to the credit of the Fidelity. The book-keepers of the Fidelity negligently overlooked the discrepancy, and, by sending a reconcilement sheet calling attention to other items, in effect, reported to the Chemical bank that the item of $300,000, as contained in the account current, was correctly set forth therein. They were not privy to the fraud, and if they had discovered the difference, it would have been their duty to prepare a letter to be forwarded to the Chemical bank calling attention to it, and to have told the executive officers of the bank of it. The general book-keeper says that he would have reported it to the cashier, but one would think that a discrepancy so vitally concerning the personal account and integrity of the vice-president would be reported to the president. In any event, we cannot presume that such a discrepancy would have been suppressed, if the president, who was certainly not privy to the fraud, had been exercising any care.

If our theory of notice to the directors by the monthly accounts current is correct, then this case cannot be distinguished from the Leather Manufacturers' Bank case, already cited. The grounds for an equitable estoppel, based on the delay in repudiating the loan, are clearly shown. It appears that more than a month after the acquiescence by the Fidelity bank in the account containing the item of the $300,000 loan, the Chemical bank, on the faith that the loan was a loan to the Fidelity bank, consented to a substitution of worthless collateral for good collateral at the instance of Harper, as vice-president. It is also quite probable that had the Chemical bank known that there was any doubt as to Harper's authority in April it would have saved itself from loss by recourse to Harper.

The effect of notice through monthly statements made in due course by one bank to another of unauthorized transactions of agents is clearly shown in the case of *Kissam v. Anderson*, 145 U. S., 435. In that case the president of a country bank drew bank drafts on its New York correspondent bank in favor of New York brokers,

who were conducting a speculation for him. The country bank failed and its receiver sued the brokers for the money of the
353 bank, because received by them on these drafts with knowledge that the president was using the funds of his bank for private speculation. The brokers sought to have the claim reduced by deposits which they had made to the credit of the country bank with its New York correspondent by direction of their client. It appeared that the New York correspondent sent regular monthly statements of the deposit account to the country bank showing these credits, but they were not transferred to the books of the country bank, and some of the accounts thus sent were not even opened. The president drew new drafts on these deposits and squandered the money elsewhere. The circuit court held that unless it appeared that these deposits actually reduced the sum total of the president's total defalcations by whatever means, below the amount of the drafts received by defendants, they could not set off the deposits returned by them. The Supreme Court, in an opinion by Mr. Justice Brewer, reversed the judgment of the circuit court. He said:

"Defendants returned this money to the Albion bank. They deposited it with the Third national bank, the correspondent of the Albion bank, and the bank from which they received the money on the checks from the Albion bank. In fact, therefore, the money was placed where it was before it was taken—in the possession and under the control of the Albion bank. Not only that, the Third national bank, in its due course of business, by monthly reports, informed the Albion bank that they had received this money, and held it subject to its order; and it was subsequently used by the Albion bank in drafts drawn by it in favor of other parties. If it be said that no officer of the Albion bank knew of these deposits except Warner, the wrong-doer, and that he subsequently drew out most of these moneys in drafts to further other wrongs, the reply is, that the other officers and directors of the Albion bank were chargeable with knowledge of these deposits. If, through their negligence, they did not in fact know, that is a matter for which the Albion bank, and not the defendants, were responsible. Kissam, Whitney & Co. had no supervision over its affairs—no knowledge as to how those affairs were managed. They were not called upon to go to Albion and hunt up the various officers and directors and inform them, one by one, personally, that these moneys had been deposited to their credit in the Third national bank. It was enough that they deposited them, and that the bank, in the regular course of business, by monthly statements, informed the Albion bank that it received and held these moneys. * * *

"It will not do to say that they put the money where he could check it out, and therefore are responsible for what he did with it. They deposited it to the credit of the Albion bank, and it was for the officers and directors of that bank to take care of its deposits. The rule might be different if Warner, the cashier of the Albion bank, was the only officer authorized to draw on the Third national bank, or charged with knowledge of the state of the account; but the president and teller had equal authority, and were equally

chargeable with knowledge; in fact, it appears that these officers did draw drafts on the New York bank, and thus diminished
354 the total amount of deposits, and the other directors, also, were under some obligation to know the affairs of the bank; and it will not do to say that the bank can ignore the negligence of all its officers and profit by their omission of duty."

The same effect was given by Judge Drummond to monthly accounts current between correspondent banks in *Burton v. Burley*, 13 Fed. Rep., 811, where a bank president had paid his personal debts by directing charges to be made upon the correspondent bank's books against his own bank.

Fourth. Another distinction said to exist between the case at bar and that of the Western national bank is, that there the money borrowed from the Western bank was at once drawn out by drafts payable to Harper, and not a penny of it went to the benefit of the Fidelity; while here, the credit of $300,000 obtained by the loan was drawn out on drafts issued to meet legitimate obligations of the Fidelity bank. Upon the day upon which the credit was given in New York to the Fidelity bank by the Chemical bank for the loan, however, Harper directed a credit to be made in his favor on the Fidelity books of $300,000, and a charge of that amount to the Chemical bank, and he afterward checked out this credit. Under the circumstances, can the Chemical bank hold the receiver as for money had and received?

The question is not free from difficulty, and as the members of the court might not be able to agree in their conclusions upon the same, and as the grounds already stated are quite sufficient to require the court to affirm the judgment of the circuit court, we do not decide the point.

The decree of the circuit court is affirmed, with costs.

355 And afterwards, to wit, on March 8, 1898, a petition for appeal to the Supreme Court was filed in said cause in said court, which reads and is as follows:

Petition for Appeal.

356 United States Circuit Court of Appeals, Sixth Circuit.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio, Appellant,
vs.
THE CHEMICAL NATIONAL BANK OF NEW YORK, Appellee.
} No. 473.

Petition on appeal.

And now comes the said plaintiff and appeals this cause to the Supreme Court of the United States and presents his assignment of errors, which are herewith filed, and prays that this appeal may be allowed, and that a transcript of the record and proceedings and papers from which the decree and orders in this cause have been

made, duly authenticated, may be sent to the Supreme Court of the United States, and that the bond to be given by him herein may be fixed by this court and duly approved as his said appeal fully purposes.

JOHN W. HERRON AND
F. F. OLDHAM,
Solicitors for Complainant.

357 And afterwards, on the same day, to wit, on March 8, 1898, assignments of error were filed in said cause in said court, which read and are as follows:

Assignments of Error.

358 United States Circuit Court of Appeals, Sixth Circuit.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio, Appellant,
vs.
THE CHEMICAL NATIONAL BANK OF NEW YORK, Appellee.
} No. 473.

Assignment of errors.

Now comes the said plaintiff and presents this his assignment of errors to the judgments and decrees of the court in this cause, to wit:

1st. That said court erred in finding that there was due to the said defendant from the Fidelity national bank on the 21st day of June, 1887, the sum of three hundred and five thousand four hundred and fifty dollars ($305,450) or any other sum.

2nd. The court erred in finding that the said defendant, on the 2nd day of March, 1887, loaned to the Fidelity national bank the sum of three hundred thousand dollars ($300,000) or any other sum.

3rd. The court erred in finding that the several sums which had been paid to the defendant prior to the declaration of dividends by the plaintiff from collaterals sent to it, as stated in the pleadings, should not be deducted from the amount of such alleged loan in determining the sum upon which dividends to the defendant should be paid.

4th. That the court erred in finding that the sum of twenty-five thousand dollars ($25,000) which the defendant failed to collect from John B. Lewis, as stated in the answer of plaintiff,
359 should not be deducted from the said alleged claim in determining the sum upon which dividends to defendant should be paid.

5th. That the court erred in finding that the defendant is entitled to dividends upon the sum of three hundred and five thousand four hundred and fifty dollars ($305,450).

6th. That the court erred in refusing to compel the defendant to exhaust the collaterals held by it as security for said alleged loan

before ordering the dividends on the same to be paid to it and in ordering dividends to be paid to defendant upon said alleged claim without reference to the collaterals still held by it.

7th. Said court erred in finding that the defendant is entitled to interest on the several dividends declared by plaintiff in favor of the president of the Fidelity national bank from the date of the presentation of the alleged claim to the plaintiff as to dividends declared prior to that date and from the date of the declaration of dividends as to those declared after that date.

8th. That the court erred in refusing to find that the said alleged loan of three hundred thousand dollars ($300,000) claimed to have been made on the 2nd day of March, 1887, by the defendant to the Fidelity national bank was without the authority of the board of directors of said bank and for which said bank was not liable.

9th. The court erred in affirming and in refusing to reverse the decree of the circuit court in this cause entered on the 13th day of October, 1896.

JOHN W. HERRON AND
F. F. OLDHAM,
Solicitors for Plaintiff.

360 And afterwards, on the same day, to wit, on March 8, 1898, an order was entered upon the journal of said court in said cause, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

DAVID ARMSTRONG, Receiver Fidelity National Bank,
v.
THE CHEMICAL NATIONAL BANK OF NEW YORK. } No. 473.

The plaintiff, David Armstrong, receiver, having filed his petition for appeal of the above cause to the Supreme Court of the United States, together with his assignments of error therein, the court now doth, upon the application of his attorneys, allow the said appeal, and doth fix the appeal bond in the sum of one thousand ($1,000.00) dollars.

March 8, 1898.

WM. H. TAFT,
Circuit Judge and Presiding Judge of Court of Appeals in Above Cause.

And afterwards, to wit, on March 11, 1898, an appeal bond was filed in said court in said cause, which is in the words and figures following:

361 Know all men by these presents that we, David Armstrong, receiver of the Fidelity National Bank of Cincinnati, as principal, and Joseph Rawson, as surety, are firmly bound unto the Chemical National Bank of New York in the full and just sum of one thousand dollars, to be paid to the said Chemical National Bank of New York, certain attorneys, executors, administrators, or assigns;

to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11 day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a term of the United States circuit court of appeals for the sixth circuit, in a suit depending in said court between David Armstrong, receiver of the Fidelity National Bank of Cincinnati, appellant, and Chemical National Bank of New York, appellee, a decree was rendered against the said David Armstrong, receiver of the Fidelity National Bank of Cincinnati, and the said David Armstrong, receiver of the Fidelity National Bank of Cincinnati, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Chemical National Bank of New York, citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, D. C., on the — day of —— next:

Now, the condition of the above obligation is such that if the said David Armstrong, receiver of the Fidelity National Bank of Cincinnati, shall prosecute said appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

362 Sealed and delivered in the presence of—

DAVID ARMSTRONG, *Receiver*,
By JOHN W. HERRON, *Att'y.* [SEAL.]
JOSEPH RAWSON.

Approved by—
WM. H. TAFT,
Circuit Judge.

363 UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

United States Circuit Court of Appeals for the Sixth Circuit.

To Chemical National Bank of New York, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, D. C., on the 18th* day of April next, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the sixth circuit, wherein David Armstrong, receiver of the Fidelity National Bank of Cincinnati, Ohio, is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 19th day of March, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence

of the United States of America the one hundred and twenty-second.

WM. H. TAFT,
Circuit Judge.

* Not exceeding 30 days from the day of signing.

364 [Endorsed:] I acknowledge service of a copy of the within citation on me this 19th March, 1898. The Chemical National Bank, by Wm. Worthington, solicitor.

365 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the printed record used at the hearing and of all of the proceedings in said court in the case of David Armstrong, rec., etc., *vs.* Chemical Nat. Bank of New York, No. 473, October term, 1897, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this 19th day of March, 1898.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: Case No. 16,849. U. S. C. C. of appeals, 6th circuit. Term No., 279. David Armstrong, receiver of the Fidelity National Bank of Cincinnati, Ohio, appellant, *vs.* The Chemical National Bank of New York. Filed April 13, 1898.

WATTERS' EXHIBIT No. 10.

Fidelity national bank, Cincinnati, O., in account with Chemical national bank.

DR. March, 1887.				CR.			
1	Ret'd		$3,001 11	1	Balance		$24,360 65
2	"		112 58	2	M'ch'ts', Atlanta		8,500
1	Imp. & Tra. bk. Cr. N. Scoby & Co.		10,000	2	Wellington & Co.		471 32
	10630	$3,000			Tem. loan		300,000
	530	40 84		2			122,651 88
			$3,040 84		Riverside Iron & S. Co.		6,364 08
2	10586	50		1	Brown	$1,300	
	143	50			Shaller	5,793 09	
	347	25 10					7,092 09
	86	117 81			Huzard	2,452 36	
	450	51			Remington	1,383 25	
	44	4 01					3,835 61
	75	199 18			Kuny		27 25
	92	43 95		3	1 Ashville	5,000	
	36	186 28				99,684 21	
	52	99 80					104,684 21
	46	160			Jas. Loenbren		451 50
	511	50			Easter	2,388 66	
	55	301 75			Remington	441 78	
	0	112 80					2,830 44
	93	21 62		4	1 Wellington	402	
	6	292 37				44,764 49	
	58	1,203 42					45,227 08
	80	35			3 Chattanooga		5,000
	39	50,000			Haysen & Reynolds		1,184 23
	44	30,000		5		63,246 07	
	644	7,000			Com. Det.	4,000	
	01	300			Savannah	6,000	
	5	5					73,246 07
	33	2,000			Swift Iron & S. Co.		5,772 84
	8	15,000		7		84,678 86	
			107,309 09			118,190 14	
	557		25		Mer., Atlanta	5,000	
	Cy. Ex. Union Nat., Cleveland		20,000		1 Ashville	10,000	
3	Ret'd		138 61				217,869 00
	9882	150			Worth		1,643 26
	10142	310			Brooks		4,087 19
	365	20		7	Brown	353 95	
	499	1 65				1,135 88	
	508	200					1,489 83
	28	61 74			Thatcher		1,414
	22	102 40			Foster		1,158 32
	14	25 79		9	S. E. & M. Vernon		98 46
	49	113 08					100,235 92
	52	64 35		10	Sargent		500
	68	868 98			Tradesman N. bk., ac. Marnee B., Pittsburg		7,500
	75	33 33					79,764 14
	53	451 01		10	Allen		43 30
	10	35		11	Bk. Ohio Valley	7,500	
	78	512 57				160,559 97	
	76	671 13					168,059 97
	554	28 14		12	Steinhardt Bro.		534 06
	669	2,000					135,409 27
	49	101 27		12	Thatcher		941 45
	24	12 50			Carnnall		24
	79	5,000		13	Tradesmen's		7,500
	31	352 92			Error, ch'g'd Jan. 10, '87		899 27
	55	13 10		14		83,844 78	
	56	32 80		15		87,681 31	
	661	102 47					171,526 09
	66	3,000			1 Ashville	10,000	
	32	170			Mere., Atlanta	15,000	
	21	107 62					25,000
	78	5,000		15	Brown		2,203 40
	52	79 68			Lamb		3,785 72
	53	800		16		107,695 28	
	60	898 12			Bk. Ohio Valley	5,000	
	08	750					112,695 28
	45	242 79		17			49,394 15
	46	302		18	A. T. Reid		207 37
	54	433				79,746 28	
	34	357 39			Ohio Valley	12,000	
	48	12					91,746 28
	50	2		18	Lindsey, Sr.		1,034 55
	26	4,000		19	S. Meyer & Allman		1,039 51
					Mr., Atlanta	20,000	
				17		99,853 73	
							119,853 73
				19	Hazard		1,041 23
					Worth		1,593 80
				21	Catochin Iron Co.		2,953
						88,840 83	
						183,711 21	
					5th, St. Louis	10,000	
							282,552 04
					Eckbach, 2-10-8		9 33
				23			106,256 09

2 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, O., in account with Chemical national bank.

Dr.				Cr.	
			$27,418 83*	$143,627 23*	$2,414,362 26*
	10664	2,000			
	702	3,981 42			
	11	15,000			
	10	20,000			
				68,400 25	
	676			10,000	
4	10647	78 13			
	94	1,700 47			
	81	48			
	82	9,235 81			
	75	35 77			
	41	50			
	80	10,000			
	89	4,462 06			
	90				
	98	3,998 42			
	93	10,000			
	40	1,325			
	35	18 02			
	758	180 66			
	10081	8			
	344	25			
	495	211 51			
	542	57 47			
	405	100			
	517	4 44			
		8			
	56	300			
	636	35			
	88	7,408 02			
	95	276 45			
	86	9,131 31			
	20	61 07			
	65	5,000			
	68	20,000			
	14	83 80			
	37	38 03			
	59	200			
	77	1,000			
	705	24 55			
	85	750			
	07	4,400			
	04	15 99			
	78	4,933 95			
	72	843 82			
	82	50,000			
	08	1,200			
	30	1,000			
	804	5,000			
	3	5,000			
	5	7,000			
				165,248 85	
	643			25	
	Ret'd end			3	
	Ed. K. Stallo's transferred			5,200	
	4 Nat. Cr. bk., Granville, O			6,000	
	L. A. & Co. Cr. Bk. of Mearar, Jackson, Tenn			7,000	
	10757	503 25			
	815	10,082 67			
	56	179 40			
	700	175			
				10,940 32	
5	10043	2,761 69			
	363	29 75			
	37	25 50			
	411	4 44			
	78	15 06			
	584	175			
	86	2,700			
	36	225			
	639	9 40			
	29	87 40			
	72	5,000			
	71	7,000			
	99	100			
	03	100			
	92	145 54			

* Figures marked with an asterisk (*) are written with lead pencil in the original.

3 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, O., in account with Chemical national bank

Dr.			Cr.
	$18,378 78*	$416,444 65*	$2,414,362 26
10697	22 87		
22	21 50		
96	7,483 21		
23	75		
84	695 76		
91	1,935 40		
774	746 30		
73	949 91		
53	329 92		
62	975 15		
88	11,843 76		
99	303		
33	318 11		
67	293 50		
54	1,282 86		
44	1,079 49		
91	601 25		
92	307 85		
51	84 52		
59	1,024 64		
05	18 64		
43	452 70		
20	1,389 99		
48	578 46		
42	873 28		
97	3,481 94		
55	1,612 20		
41	778 46		
80	100		
22	30 85		
24	35		
39	27 67		
63	134		
56	1,530 82		
99	15		
36	1,037 13		
45	1,174 19		
69	530 55		
66	155 27		
61	686 18		
13	73 93		
94	548 92		
75	125 30		
40	188 22		
89	1,419 10		
37	1,259 46		
86	1 70		
27	101 80		
58	590 82		
95	601 12		
835	1,000		
62	450 11		
14	6,214 89		
50	5,000		
34	3,000		
09	47 38		
10	44 23		
31	5,000		
01	522 49		
07	2,781 51		
33	2,000		
06	99 80		
02	4 82		
32	1,000		
57	2,517 85		
		97,988 56	
7 Cash		64	
		3,500	

*Figures marked with an asterisk (*) are written with lead pencil in the original.

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr.			Cr.
		$617,997 21*	$2,414,362 26*
6962	$500		
9085	109 50		
10322	35 13		
483	4 55		
512	1,341 90		
79	3,000		
663	3 62		
25	234		
83	336 15		
19	121 25		
74	27		
58	549 75		
42	95		
720	100		
25	20 84		
60	73 98		
38	190		
46	9 80		
28	391 12		
26	21 46		
68	20 25		
84	19		
47	35 95		
21	58 63		
16	15		
76	734 06		
50	1,360 94		
34	548 44		
64	1,332 59		
87	25		
52	217 65		
14	29 80		
854	46 67		
28	10,457 12		
64	77 42		
81	9,996		
20	2,320 70		
95	215 04		
58	40 43		
46	590 74		
16	4,879 61		
17	2,087 07		
22	3,270 96		
68	10,000		
67	500		
26	6,969 36		
13	3,698 87		
18	2,062 55		
69	5,000		
47	499 80		
63	3,524 10		
00	61 33		
61	45 16		
19	2,077 46		
96	890 55		
59	700		
79	1,000		
21	2,406 41		
44	86 20		
78	5,000		
25	3,043 59		
45	188 76		
77	2,000		
12	6,198 75		
29	3,146 54		
43	282 16		
24	1,552 33		
55	12		
08	69 80		
51	34 78		
65	9 82		
955	50,000		
42	50,000		

* Figures marked with an asterisk (*) are written with lead pencil in the original.

5 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr.			Cr.
		$517,997 21*	$2,414,362 26*
10956	$40,000		
48	1,000		
50	5,000		
11	5,000		
69	1,342 93		
07	1,012 10		
52	3,000		
62	5,000		
		268,557 47	
921	97 71		
22	219 06		
838	800		
953	1,500		
811	5,234 50		
735	207 80		
823	6,426 28		
965	15,000		
		29,485 35	
958	1,000		
57	1,000		
10202	10		
429	35		
590	20		
31	24 55		
51	20		
90	34 27		
71	7 50		
31	67 25		
49	225 49		
32	187 01		
79	16		
703	100		
65	257 24		
18	1 40		
882	59 74		
53	100		
97	49 80		
89	20 40		
60	111 38		
84	9 68		
75	9 30		
66	458		
87	500		
39	6		
37	161 80		
73	2 16		
88	500		
908	999 60		
68	27 70		
33	37 89		
45	52		
18	105 67		
57	129 13		
29	28 58		
54	1,000		
39	6 71		
26	15 51		
10	1,544 05		
67	58 80		
00	95 80		
04	599 75		
61	69 80		
14	167 18		
17	54 40		
05	74 80		
02	42 82		
30	143 09		
25	12 32		
32	509		
15	181		
19	451 36		
51	191 19		
38	10,000		
03	4,000		
15	43 25		
49	163 34		
	188 44		
		25,987 15	

* Figures marked with an asterisk (*) are written with lead pencil in the original.

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr.			Cr.	
			$42,027 14*	$2,414,362 26
	759	$29 80		
	701	100		
		129 80		
3	Cert. 10662	20,000	20,000	
	" 783		25,000	
9	Cash		53	
	"		30 60	
	"		22 75	
9	8682	100		
	80	100		
	9330	10 70		
	10364	166 66		
	687	44 43		
	781	35		
	12	57 40		
	70	161 52		
	98	27 30		
	836	100		
	40	10 69		
	90	79 46		
	72	1 77		
	30	8 82		
	85	22 58		
	76	19 64		
	74	14 18		
	86	6 57		
	991	5,000		
	20	463 21		
	35	35		
	89	2,000		
	95	3,000		
	40	12		
	34	224 60		
	12	94 73		
	93	10,000		
	88	50,000		
	23	91 10		
	36	12 50		
	92	5,000		
	27	39 73		
	44	40 52		
	87	2,000		
	43	48		
	028	4,782 16		
			83,810 27	
	16947		900	
	Imp. and Tra. Cr. A. Gobys Cr.		10,000	
10	Ret. Pro.		26 84	
	" "		2 42	
	0464	25		
	618	15		
	28	6 66		
	777	153		
	06	6 87		
	6841	2 75		
	48	2,000		
	964	60		
	98	16		
	31	123 43		
	66	26 23		
	60	2 32		
	58	100		
	90	5,000		
	94	500		
	901	411 56		
	96	200		
	72	162		
	001	273 06		
	34	175 39		
	76	4,561 54		
	06	2,374 53		
	24	364 10		
	71	1,000		
	23	179 25		

*Figures marked with an asterisk (*) are written with lead pencil in the original.

7 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr.			Cr.
		$982,002 86*	$2,414,362 20*
1000	$59 05		
041	5,000		
30	325 11		
32	1,005 25		
11	5,973 18		
08	3,159 81		
38	8 75		
53	12,000		
44	3,000		
10	1,585 93		
27	17 51		
12	2,179 92		
07	4,305 27		
43	1,000		
20	4 74		
02	15,760 65		
47	20,659 91		
09	254 96		
		94,038 73	
11 Cash ret. unp'd		14 50	
" " "		1,500	
" " "		2,500	
581	25 25		
717	40		
23	9		
19	100		
898	49 80		
99	299 80		
78	19 49		
74	11 10		
924	1,467 17		
81	7 50		
84	79 30		
82	4 42		
79	45 76		
71	40		
86	1,000		
60	466 70		
69	1,471		
78	5,000		
015	460		
66	366 60		
70	713 86		
68	369 88		
35	3 85		
65	397 84		
05	852 08		
42	1,000		
03	3,399 51		
26	30 08		
16	85 68		
63	428 37		
50	13 75		
22	80		
64	651 36		
62	1,643 03		
38	25		
87	7,500		
56	341 75		
58	1,188 27		
25	50		
55	391 30		
13	177 11		
46	14,272 08		
54	96 86		
77	1,000		
61	546 49		
07	842 91		
72	764 55		
14	725 04		
		48,553 54	
49	100		
21	171		
41	56 87		
42	20 25		
		348 12	

* Figures marked with an asterisk (*) are written with a lead pencil in the original.

Fidelity national bank, Cincinnati, in account with Chemical national bank.

Dr.	March.				Cr.
			$1,128,957 75*		$2,414,362 20*
12	796	$28			
	1103	2,000			
	0928	21 39			
	852	50			
	997	200			
	37	25			
	11121	4,000			
	996	1,497 39			
	267	50			
	73	431 12			
	406	4 44			
	980	72 66			
	77	25			
	79	2,000			
	99	1,000			
	91	442 45			
	04	2,228 81			
	36	3			
	74	76 60			
	86	1,195 59			
	37	14 74			
	51	225 47			
	84	700			
	28	3,000			
	101	1,500			
	02	8,000			
	04	5,000			
	00	2,688 95			
	25	15,000			
	07	20,000			
	06	5,000			
	61	10			
			76,490 61		
	134	514 57			
	32	1,027 76			
	08	499 30			
	30	10,000 00			
	24	15,000 00			
			27,041 63		
14	9775	100			
	10248	57 25			
	480	100			
	892	100			
	975	4 25			
	46	12			
	73	13 55			
	70	13 37			
	11057	94 10			
	95	50			
	45	2 49			
	29	40			
	90	74 75			
	82	580 81			
	75	29 80			
	59	1,246 70			
	85	143 67			
	39	17 50			
	49	327 62			
	93	120			
	33	749 70			
	52	508 27			
	97	75,000			
	89	18 21			
	92	51 89			
	31	294 05			
	135	503 97			
	20	34 78			
	45	70 12			
	18	18 49			
	93	7,072 48			
	68	15,000			
	12	57 41			
	44	70 87			
	41	111 29			

* Figures marked with an asterisk (*) are written with lead pencil in the original.

9 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, O., in account with Chemical national bank.

Dr. March.				Cr.
		$102,080 39*	$1,232,489 39*	$2,414,362 26*
14	11137	295 64		
	27	5,000		
	16	69 09		
	30	286 50		
	52	34 88		
	65	2,000		
	51	46 06		
	60	5,000		
	64	5,000		
	62	1,000		
	61	5,000		
	66	2,000		
	69	5 80		
	36	355 10		
	63	1,000		
	105	1,000		
	19	48 65		
	67	10,000		
	59	10,000		
	49	51 65		
	39	219 83		
	26	416 80		
	10	172 94		
	11	249 12		
	54	199 80		
	90	2,015 41		
	33	525 90		
	47	63 85		
	09	197 82		
	31	2,826		
	14	1,093 08		
	64	440 08		
	269	3,645 54		
	12	429 66		
	66	5,000		
	90	5,000		
	02	225 49		
	48	447 89		
	37	1,000		
	60	19,103 85		
	74	5,000		
	91	5,000		
			204,155 82	
	36	1,200		
	65	15,000		
	95	202 74		
			16,402 74	
15	7410	100		
	12	100		
	11	100		
	08	100		
	09	100		
	10541	34 46		
	883	15 07		
	983	3		
	76	32		
	99	125		
	10993	54		
	11048	400		
	81	100		
	88	2 77		
	140	176 71		
	96	1,928 23		
	75	3,780 35		
	97	140 34		
	74	472 99		
	70	228 15		
	94	1,582 04		
	86	1,968 02		
	77	225 90		
	99	1,977 50		
	78	2,160 84		
	85	1,154 92		
	76	1,035 37		

* Figures marked with an asterisk (*) are written with lead pencil in the original.

10 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, in account with Chemical national bank.

DR. March. CR.

	$18,097 66*	$1,453,048 55*	$2,414,362 26*
179	1,134 82		
88	2,650 10		
89	2,093 39		
46	68 63		
92	2,314 69		
80	874 54		
48	57 63		
50	52 90		
43	75 62		
73	4,810 49		
53	16 78		
98	152 73		
15	52 17		
230	163 73		
79	1,268 07		
76	901 15		
59	136		
81	70 12		
75	900		
58	10		
82	14 55		
20	135 66		
62	6 50		
27	105 84		
34	227 10		
17	7,762 97		
80	989 16		
84	1 67		
88	1,000		
35	3,000		
61	52 23		
45	1,481 43		
52	473 10		
23	1,749 99		
14	1,448 46		
32	22 25		
57	58 14		
07	1,191 32		
40	4,297 73		
44	2,056 26		
97	6 85		
21	313 65		
33	386 23		
56	72 05		
22	5,522 33		
18	9,012 86		
04	1,279 18		
56	34		
03	4,245 65		
31	106		
85	1 07		
01	1,829 53		
302	255 62		
21	5		
00	1,088 60		
09	132 70		
11	621 45		
12	265 20		
20	17		
03	104 18		
08	89 40		
05	56 50		
		87,130 63	
260	4,443 60		
51	3,188 14		
301	153 08		
Duplicate, 10526	145 25		
		7,930 07	
16 Cash ret. date		38 20	
Ret. pay		89 85	

* Figures marked with an asterisk (*) are written with lead pencil in the original.

11 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr.	March.		Cr.
		$1,548,237 30*	$2,414,362 26*
16	8626	100	
	9788	100	
	10490	200	
	122	45 93	
	83	3,270 04	
	87	4 57	
	13	22 06	
	82	562 06	
	84	78 76	
	17	1,031 55	
	42	81 43	
	72	1	
	219	1,747 75	
	16	3,929 47	
	95	9,937 50	
	55	950	
	72	24 65	
	39	5,652 48	
	96	18 10	
	68	35 30	
	92	2,000	
	205	3,063 45	
	29	123	
	49	65 25	
	53	131 33	
	86	520 07	
	89	1,700	
	25	35	
	08	187 40	
	10	138 48	
	06	322 54	
	11	20 47	
	42	18 15	
	09	941 63	
	70	50	
	78	15,000	
	314	7	
	70	1,000	
	68	3,000	
	17	302 42	
	63	3,782 36	
	77	3,000	
	30	8,121 08	
	80	5,000	
	15	2,499	
	76	5,000	
	73	3,000	
	06	35 25	
	10	37 20	
	54	3,549 55	
	71	2,000	
	75	4,000	
	74	1,000	
	16	29 30	
	72	5,000	
	92	1,476 26	
			103,948 83
	247	474 99	
	349	63 13	
			538 12
17	Cash		33 26
	Ret. unp'd		2 50
17	10870	40	
	1156	8 80	
	55	100	
	23	530	
	81	1,747 56	
	91	1,315 25	
	58	11 20	
	57	16 25	
	240	25	
	87	130 42	
	63	50	
	98	875	

*Figures marked with an asterisk (*) are written with a lead pencil in the original.

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr.	March.			Cr.
		$4,054 48*	$1,652,760 01*	$2,414,362 26*
	340	25 26		
	90	2,200		
	53	249 75		
	52	16 17		
	31	13,929 80		
	29	419		
	27	905 83		
	37	7,954 34		
	82	20 13		
	98	1,000		
	07	589 60		
	62	158 89		
	51	384 51		
	34	1,614 88		
	85	55 72		
	86	12		
	18	105 68		
	69	10,000		
	48	93 49		
	88	301 51		
	429	2,500		
	08	3,000		
	17	4,000		
	00	15,000		
	07	3,000		
	13	2,500		
	15	2,500		
			76,681 04	
	223	112 55		
	28	100		
	94	13 65		
	15	130 25		
	13	21 10		
	35	4,917 04		
	13	139		
	32	10,364 75		
	95	2,998 80		
	26	69 81		
	94	1,749 59		
	93	1,706 43		
	28	15,039 10		
	36	2,591 64		
			40,553 71	
	81	50		
	93	500		
	40	5		
			555	
18	Cash ret. unp'd		115	
	Ret. "		46	
	Cash		3,001 33	
18	9649	100		
	10385	2,525 88		
	241	921 95		
	26	27		
	54	75		
	38	25		
	85	12 50		
	325	15 47		
	38	963 58		
	39	50		
	78	15,000		
	79	15,000		
	50	48 39		
	33	68 50		
	61	1 40		
	32	27 80		
	421	96 52		
	45	244 40		
	82	4,013 79		
	39	15,000		
	38	57 40		
	25	95 53		
	40	41 35		
	48	3,000		
			57,411 46	
	68		61 83	

* Figures marked with an asterisk (*) are written with lead pencil in the original.

13 *Walters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, O., in account with Chemical national bank.

Dr.	March.			Cr.
			$1,831,185 38*	$2,414,362 26*
19	Ret. unp'd		147 63	
	" date		24	
	" end		11 50	
	" ret		201 21	
	10341	200		
	500	5		
	627	63 37		
	963	5		
	1290	50		
	324	37 80		
	64	1 60		
	66	1 90		
	42	20		
	65	99 80		
	87	9 88		
	47	23 23		
	436	539 70		
	73	2,325 25		
	92	3,000		
	64	84 60		
	44	952 04		
	20	17 42		
	09	208 13		
	67	39 10		
	12	51 93		
	59	406 25		
	16	107 90		
	30	2 20		
	23	400		
	68	238 83		
	04	1 20		
	57	727 18		
	62	422 19		
	18	585		
	54	50		
	06	68 70		
	05	7 91		
	11	114 60		
	49	10,000		
	70	119 59		
	86	8 32		
	66	31 82		
	01	32 35		
	534	312 04		
	16	2,000		
	18	10,000		
			33,371 83	
	23	155 10		
	19	21,620 02		
	91	1,500		
	58	205		
	02	390 77		
			23,870 89	
21	Ret. pro		59 35	
	" "		151 16	
	" "		501 16	
	9647	100		
	11171	118 05		
	207	1,000		
	383	350		
	43	50		
	04	4		
	23	2 23		
	84	19		
	99	12 06		
	96	29 80		
	71	57 75		
	19	23 85		
	63	65 48		
	85	28 60		
	43	222 55		
	61	264 93		
	47	57 16		
	79	978 54		

* Figures marked with an asterisk (*) are written with lead pencil in the original.

14 *Watters' Exhibit No. 10—(Continued).*

Fidelity national bank, Cincinnati, in account with Chemical national bank.

Dr. March.				Cr.
		$3,384*	$1,889,524 11*	$2,414,362 26*
	494	5,000		
	50	10,000		
	93	5,000		
	37	149 80		
	74	599 75		
	84	90 12		
	97	50 76		
	98	69 63		
	51	25		
	96	999 60		
	77	25		
	53	466 67		
	43	2,000		
	504	60		
	87	5,000		
	06	124 79		
	35	645 52		
	42	1,000		
	86	5,000		
	52	10,000		
	20	9,000		
	72	50,000		
	48	25,000		
	50	50,000		
	01	32 85		
	51	15,000		
	59	126 88		
	13	200 00		
	45	2,000		
	41	3,000		
	25	200		
	61	298 30		
	29	2 92		
	07	46 88		
	27	1,000		
	44	2,000		
	17	10,000		
	12	39 50		
	11	25		
	31	439 77		
	02	52 59		
	08	49 25		
	22	588 57		
	32	690 58		
	617	4,000		
			223,483 73	
	593	401 11		
	88	5,000		
	75	799 70		
			6,200 81	
	Dep. with ass't treas.		100,000	
	Pre. on 100,000 ordered on ass't treas		75	
22	Ret. end		167 50	
	" pro		251 16	
	" "		501 16	
	" "		61 11	
	" "		44 86	
21	9877	100		
	11083	28		
	273	31 80		
	342	250		
	91	300		
	431	40		
	72	4,758 75		
	80	72 50		
	60	204 83		
	81	122		
	56	50		
	46	44 29		
	65	76 92		
	504	44 55		
	58	228 69		
	70	57 62		
	05	92		

* Figures marked with an asterisk (*) are written with lead pencil in the original.

15 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr. March.			Cr.
	$6,501 95*	$2,220,309 44*	$2,414,362 26*
554	52 65		
69	119 39		
94	282 06		
03	36 43		
74	218 66		
92	10 34		
65	19 80		
47	17 72		
78	12 30		
98	20 20		
96	21 40		
56	110 04		
95	87 19		
30	138 30		
99	29 30		
97	580 28		
21	30		
00	53 81		
64	8 82		
634	1 75		
07	17 12		
09	500		
00	470 57		
03	12 15		
15	2,953 25		
16	2,524 25		
10	500		
02	3 35		
21	301 93		
08	115 80		
14	50		
		15,800 81	
414	50		
619	1,000		
		1,050	
23 Ret. end		1,460	
" unp'd		175	
" "		6 21	
" end		10	
" pro		401 25	
" "		251 21	
" unp'd		45 68	
" end		13 68	
10871	15		
1129	50		
76	4,200		
452	57		
87	44 75		
03	30 66		
574	150		
55	124 93		
46	52 91		
60	30 67		
37	2,800		
85	6 08		
89	30,000		
91	1		
67	2,000 07		
68	819 70		
79	326 10		
626	20 05		
22	125 52		
11	250		
20	99 68		
35	62 50		
06	26 76		
27	99 80		
734	100		
07	3,988 55		
63	11,080 49		
55	15,000		
64	50,000		
66	8,000		
10	500		
		130,072 22	
601		7 25	

* Figures marked with an asterisk (*) are written with a lead pencil in the original.

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr. March.			Cr.
		$2,369,602 75*	$2,414,362 26*
24	Ret. pro	1 11	
	10893	12	
	1427	100	
	28	100	
	540	299 80	
	90	7 95	
	57	90	
	76	50	
	84	500	
	53	222	
	33	72 70	
	09	60	
	633	16 55	
	32	199 80	
	69	295 94	
	78	2,843 28	
	92	166 52	
	94	3,513 56	
	48	2,306 49	
	74	102 56	
	68	2,062 80	
	44	729 30	
	62	1,648 75	
	56	227 08	
	82	668	
	47	3,952 20	
	43	2,651 48	
	88	970 45	
	95	2,980 62	
	71	3,025 78	
	60	2,409 20	
	99	1,044 23	
	58	358 77	
	39	20	
	39	94 35	
	24	51 29	
	23	260 14	
	70	641 50	
	77	569 37	
	709	831 74	
	642	175	
	05	1,342 29	
	75	919 96	
	49	1,281 81	
	41	584 03	
	85	1,669 67	
	65	1,375 25	
	66	12,227 75	
	81	1,035 14	
	50	2,257 51	
	98	2,725 26	
	73	151 41	
	72	1,875 44	
	64	114 58	
	37	1,936 73	
	46	53 50	
	25	11 05	
	31	628 56	
	714	267 32	
	50	5,000	
	70	183 37	
	52	17,591 73	
	57	96 74	
	40	20 38	
	45	720 09	
	00	99 80	
	59	5,000	
	67	75	
	30	2,500	
	65	49 27	
	37	2,926 45	

* Figures marked with an asterisk (*) are written with lead pencil in the original.

17 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, O., in account with Chemical national bank.

Dr. March.			Cr.
	$101,051 20*	$2,369,603 86*	$2,414,362 26*
27	60 35		
74	1,677 75		
75	67 21		
61	5 80		
69	5,000		
01	1,020 27		
08	1,076 62		
68	5,000		
10	2,141 61		
79	10,000		
12	139 56		
49	7,500		
54	1,500		
71	5,000		
51	479 89		
48	50		
29	18 81		
44	53 30		
28	58 93		
98	1,000		
31	103 10		
800	2,500		
02	5,000		
659	25		
		150,504 49	
67	348 15		
739	180 52		
629	80		
804	59 84		
732	69 30		
		762 81	
25 Ret. unp'd		35	
0523	10		
1341	56		
538	7 73		
28	29 80		
10	50		
690	208 85		
55	1,510 91		
93	80 07		
57	47 87		
89	1,174 31		
63	1,640 40		
51	130 20		
54	541 42		
97	80 36		
91	1,493 51		
61	1,322 78		
76	1,350 52		
96	810 11		
28	80		
83	91 14		
52	1,879 15		
79	507 39		
45	184 41		
80	2,349 82		
87	921 69		
713	5 54		
16	54 56		
99	10,000		
73	3,000		
25	92		
21	500		
78	1 85		
47	36 70		
60	52 30		
38	286 10		
15	130 19		
46	39 79		
96	2		
36	9		
17	435		
76	49 80		
19	295		

* Figures marked with an asterisk (*) are written with lead pencil in the original.

18 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr. March.				Cr.
		$31,250 62*	$2,520,906 16*	$2,414,362 26*
	720	52 20		
	97	6,000		
	23	80		
	92	4,145 83		
	818	17,409 07		
	59	1,500		
	67	7,000		
	05	5 23		
	58	1,000		
	07	235 43		
	01	4,136 27		
	15	292 41		
	09	65 58		
	72	420 02		
			73,592 66	
	822	621 10		
	33	270		
	24	1,898 09		
	19	18 50		
	35	208 92		
	711	696 48		
			3,713 09	
26	Ret. pro		21 56	
	" "		21 56	
	" "		21 56	
	" "		21 56	
26	8687	100		
	83	100		
	79	100		
	11389	118 29		
	422	4 20		
	539	142 50		
	684	70 28		
	702	241 88		
	794	144 93		
	90	12,664 80		
	45	31 70		
	89	7,869 12		
	06	3,000		
	80	14,082 80		
	93	4,168 98		
	88	8,631 24		
	95	124		
	87	7,117 43		
	81	5,662 88		
	84	3,974 87		
	85	7,708 43		
	82	4,711 65		
	72	6,000		
	820	33 25		
	61	149 80		
	13	182 24		
	12	168 32		
	60	6,000		
	30	195 30		
	31	210 07		
	29	362 59		
	74	291 77		
	32	307 82		
	44	41 96		
	78	3,000		
	19	376 68		
	08	32 80		
	41	12 03		
	65	500		
	62	2,459 50		
	28	414 20		
	91	1,000		
	57	9		
	16	4		
	42	101 79		
	25	451 48		
	36	296 37		
	23	416 21		

* Figures marked with an asterisk (*) are written with lead pencil in the original.

19 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr. March.			Cr.
03	$15		$2,414,362 26*
43	57 29		
51	39 89		
50	140 50		
71	958 27		
45	94 13		
34	339 08		
69	11 70		
14	43 66		
52	144 63		
906	10,000		
		$115,691 31	
806	201 51		
791	6,083 74		
86	5,534 35		
442	100		
895	193		
		12,112 60	
28 Ret. pro		21 56	
" date		98 23	
" end		10	
		$2,726,231 85*	
26 Cert		10,000	
28 8627	100		
11322	1 20		
483	25		
90	581 90		
88	1,000		
89	1,000		
95	2,850		
686	762 99		
724	650		
33	100		
83	3,271 75		
18	244 06		
54	117 43		
80	1,024 34		
76	145 80		
97	329 75		
93	138 30		
68	67		
73	312 80		
90	356 57		
55	106 15		
10	31 90		
53	86 60		
27	985 30		
46	16 20		
70	389 36		
82	151 68		
98	6 05		
87	30		
86	25		
89	53 75		
48	139 97		
26	1,676 83		
63	87 20		
94	167 35		
907	22,000		
15	20,000		
22	5,000		
73	5,000		
09	3,000		
24	199 79		
59	1,000		
04	101 25		
02	43 39		
00	6,265 16		
1	203 06		
52	999 60		
12	1,500		
35	425 40		
13	7,000		

*Figures marked with an asterisk (*) are written with a lead pencil in the original.

20 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, Ohio, in account with Chemical national bank.

Dr. March.

		$89,769 88*	$2,736,231 85*					$2,414,362 26*
	905	2,246 28		22	Hazard	$1,010 25		
	45	8,000			Richmond	1,125 52		
	77	6,009			Davidson	3,903 92		
	16	3,000			Richmond	2,142 73		
	03	265 48						8,182 42
		270 51	109,281 64	22	Galbeath			286 59
		10 80			Winter's Nat.	10,000		
			281 31		22 M	95,962 22		
29*	144	100						105,962 22
	106	100		25	R. K. Carter			500
	271	84 40			Crook			7 70
	424	72 17			B. W. Hitchcock			200 75
	536	29 77			Winter's Nat.	30,000		
	636	10			23	59,152 83		
	38	50						89,152 83
	735	1 40		26	Error cr., 2-14, $\frac{94279}{94179}\frac{08}{08}$			100
	811	8 60			24	77,932 66		
	49	213 69			Mrc., Atlanta	20,000		
	99	144 56						97,932 66
	56	50			Van Worden			173 91
	71	2,200		28	26	76,046 92		
	39	125 37			25	94,403 95		
	31	75			Bk. Ohio Valley	5,000		
	17	203 19			1 Ashville	7,500		
	55	5,936 68						182,950 87
	914	5,000			Thatcher	1,194 30		
	42	84 21			"	1,999		
	32	128 52						3,193 30
	74	4,152 08			Carter			124 91
	19	318 45						2,902,830 33*
	38	171 74						
	50	999 60						
	21	70						
	26	500						
	37	182 17						
	11	5,000						
	43	33 81						
	41	96 89						
	10	1,000						
	34	50						
	40	120 13						
	36	287 80						
	27	500						
	53	72 30						
			28,172 53					
			2,873,907 33*					$2,902,830 33
			28,863 00		Balance March 28, 1887			$28,863

E. & O. E.

W. J. QUINLAN, Jr., *C. F.*

* Figures marked with an asterisk (*) are written with lead pencil in the original.

21 *Watters' Exhibit No. 10*—(Continued).

Fidelity national bank, Cincinnati, in account with Chemical national bank.

Dr. March.			Cr.	
29	Ret. pro.		$21 56	$28,863*
	892		10 80	
30	11577	192 35		
	722	100		
	885	7 58		
	39	25		
	84	53 14		
	47	337 20		
	920	5,000		
	96	632 73		
	18	5,000		
	58	2,000		
	92	6 36		
	69	5,000		
	86	520		
	65	3 75		
	54	27 55		
	48	12 83		
	80	58 25		
	25	10,011 21		
	98	500		
	94	7 87		
	70	19 02		
	44	942 19		
	67	2,500		
	93	5,000		
	020	25		
			37,982 03	
	881	1,149 98		
	972	1,000		
	57	1,000		
	60	1,500		
	023	15,000		
	526	30		
			19,679 98	
	519	100		
	709	265		
	344	25		
	478	106		
	613	50		
	762	68 40		
	864	131 54		
	40	75		
	962	20		
	88	5,000		
	97	474 50		
	78	397 64		
	87	5,000		
	68	20		
	64	33 33		
	51	10,000		
	91	7,000		
	95	329 27		
	09	37 49		
	19	1,000		
	43	7,505 57		
	01	456 67		
	03	55 16		
	30	1,000		
	65	16 05		
	28	3,540 21		
	07	2,520 46		
	06	101 50		
	00	8,749 26		
	10	172 96		
	18	4,373 78		
	05	244		
	14	5,715 29		
	08	1,640 54		
	02	2,442 64		
	04	781 91		
	31	1,000		
	39	3,000		
	40	350		
			73,799 17	

*Figures marked with an asterisk (*) are written with lead pencil in the original.

22 *Watters' Exhibit No.* 10—(Continued).

Fidelity national bank, Cincinnati, O., in account with Chemical national bank.

Dr. March.

			$131,493 54*				$28,863*
31	Cash		69 00	29	Error, M'ch 4, '82, footing dr. cash		10
			15		N. Y. Life Ins		9 45
	83		52 82	29	Wenham		14 75
	10891	100		29	Potter		118 24
	11581	60			Richmond		673 45
	756	5		30			96,686 97
	58	187 86			Finlong		63 20
	75	9		31	Jesselson & Co		100
	963	1,200			Greensborough, Md.	841 31	
	85	42				66,023 19	
	61	35					66,864 50
	83	296 71		31	Richmond		2,089 90
	89	10,000					195,413 50*
	99	161 05			April 1, '87. Balance		32,675 97
	46	57 10					
	47	30 05					
	90	45					
	2059	129 28					
	41	10,000					
	62	15 42					
	26	10 65					
	29	169 04					
	66	77 50					
	15	96 75					
	42	8,000					
	91	27,342 13					
	33	35 57					
	44	10,000					
	89	115 93					
	51	8					
	68	74 62					
	67	136					
	58	341 20					
	13	500					
	60	265					
	79	1,000					
	38	5,000					
	27	92 30					
	36	10,000					
	46	16 86					
	55	769 01					
	69	3 80					
	47	31 25					
	37	10,000					
			96,450 08				
			228,089 53				$228,089 53
	April 1, '87. Balance		32,675 97				

E. & O. E.

W. J. QUINLAN, JR., *Cash'r.*
FINCH.

* Figures marked with an asterisk (*) are written with lead pencil in the original.

23 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of "Watters' Exhibit No. 10" in the case of David Armstrong, receiver of the Fidelity National Bank of Cincinnati, Ohio, *vs.* The Chemical National Bank of New York, No. 473, October term, 189–, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this 14 October, 1898.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

24 Supreme Court of the United States, October Term, 1898.

DAVID ARMSTRONG, Receiver of the Fidelity National Bank of Cincinnati, Ohio, Appellant,
vs.
THE CHEMICAL NATIONAL BANK OF NEW York, Appellee.

No. 279. (General Docket, No. 16849.)

Stipulation.

It appearing that by inadvertence the clerk of the United States circuit court of appeals for the sixth circuit in certifying the transcript of the record in this cause has failed to include therein a copy of the exhibit offered by the appellee and styled "Watters' Exhibit No. 10," which was a part of said record, as will appear from page 116 of the transcript as certified by said clerk (page 101 of said record as printed by the clerk of the Supreme Court), it is now agreed that the clerk of said circuit court of appeals shall transmit to the clerk of the Supreme Court a certified copy of said exhibit, together with this stipulation, and that the same shall be filed, made, and considered a part of the record in this cause as fully as if said exhibit had been contained in the transcript of said record first certified by said clerk of the court of appeals, proceedings in the nature of suggestion of diminution of record being waived.

Cincinnati, Oct. 13th, 1898.

JOHN W. HERRON,
F. F. OLDHAM,
Solicitors and Counsel for Appellant.
WM. WORTHINGTON,
Solicitor and of Counsel for Appellee.

25 [Endorsed :] Case No. 16,849. Supreme Court U. S., October term, 1898. Term No., 279. David Armstrong, rec'r, &c., app't, *vs.* The Chemical National Bank of New York. Stipulation & addition to record. Filed Oct. 17, 1898.